STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0923

State of Minnesota,
Respondent,

vs.

Rylan Dakota Andersen,
Appellant.

Filed June 8, 2020
Reversed
Johnson, Judge

Blue Earth County District Court
File No. 07-CR-18-1754

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Heidi J.K. Fessler, St. Paul, Minnesota; and

James J. Kuettner, Mankato, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

S Y L L A B U S

Section 609.748, subdivision 6, of the Minnesota Statutes, which sets forth the crime of violating a harassment restraining order, does not expressly provide for strict liability and is not a public-welfare offense. Thus, in a prosecution for violating a harassment restraining order, the state must prove that the defendant knew all the facts that would cause him or her to be in violation of the harassment restraining order.

O P I N I O N

JOHNSON, Judge

Rylan Dakota Andersen was served with a harassment restraining order (HRO) that, among other things, prohibited him from contacting the petitioner and from being within 100 feet of her residence. But the location of the petitioner's residence was deemed confidential and was not disclosed in the HRO. The state later charged Andersen with violating the HRO after he walked within 100 feet of the apartment building in which the petitioner lived. After a court trial, the district court found Andersen guilty. But the district court specifically found that the state did not prove that Andersen knew the location of the petitioner's residence. The district court reasoned that, as a matter of law, the state is not required to prove that Andersen knew the location of the petitioner's residence. We conclude that proof of such knowledge is required. Therefore, we reverse the conviction.

FACTS

Andersen and M.L.B. were students at Minnesota State University, Mankato (MSU), majoring in similar subjects. For a period of time, they had a friendship, but in August 2017, M.L.B. petitioned the Blue Earth County District Court for an HRO on the ground that Andersen had harassed her. After an August 18, 2017 hearing at which Andersen appeared, the district court granted M.L.B.'s petition and ordered relief for a period of approximately one year. Paragraph 1 of the HRO provides as follows:

The request for relief is granted and:

A. Respondent shall not harass Petitioner.

B. Respondent shall have no direct or indirect contact with Petitioner, including any visits to or phone calls to the protected person, contact via electronic means such as email or social networking sites, threats or assaultive behavior to the protected person, damaging or stealing property belonging to the protected person, breaking into and entering the protected person's residence, and/or taking pictures of a protected person without permission of Petitioner.

C. Respondent is prohibited from being within 100 feet of Petitioner's home, the address of which is confidential.

D. Respondent is prohibited from being within 100 feet of Petitioner's job site at [address is stated in the HRO but is redacted from this opinion].

E. Respondent is prohibited from being on the campus of Minnesota State University-Mankato, in Mankato, Minnesota, with the following exceptions:

a. Respondent may be on the campus of MSU—Mankato to attend classes, including reasonable presence on campus to accommodate attendance at and transport to and from classes.

b. Respondent may be on the campus of MSU—Mankato to attend public events; however, Respondent must make all reasonable efforts to avoid direct contact with Petitioner at such events.

c. If contacted by an official of MSU—Mankato with regard to any changes in class schedules, Respondent will cooperate with such official in changing his class schedule in order to avoid having any classes with Petitioner.

In April 2018, M.L.B. lived in an apartment in the multi-building Highland Hills apartment complex, which is within walking distance of the MSU campus. The complex

includes four apartment buildings surrounding a grassy courtyard. On the afternoon of April 24, 2018, M.L.B.'s roommate and another student saw Andersen walk through the apartment complex in the direction of the building in which M.L.B. lived, walk across the grassy courtyard, and then turn around and leave the complex. Both students recognized Andersen and knew that M.L.B. had obtained an HRO that prohibited him from being near her residence. M.L.B.'s roommate called 911 and also called M.L.B. to alert her to Andersen's presence at the apartment complex.

Officer McClinton of the City of Mankato Police Department responded to the 911 call. M.L.B.'s roommate and the other student showed Officer McClinton where they had seen Andersen and pointed out M.L.B.'s apartment building. Based on the students' accounts, Officer McClinton estimated that Andersen was approximately 30 feet away from M.L.B.'s apartment building. The two students told Officer McClinton that Andersen appeared to recognize them and then quickly changed direction and walked toward the university campus. Officer McClinton also interviewed Andersen, who explained that he was walking through the apartment complex to go to a nearby restaurant for lunch but then changed his mind and decided to go to a different restaurant that is closer to campus. Andersen confirmed that he was aware of the HRO but said that he did not know that M.L.B. lived in the Highland Hills complex.

One day later, the state charged Andersen with two crimes. The state later filed an amended complaint, which alleged two misdemeanor violations of the HRO, in violation of Minn. Stat. § 609.748, subd. 6(b) (2016): one occurring on April 24, 2018, and one occurring on a later date.

The case was tried to the district court on one day in February 2019. Andersen stipulated to the existence of the HRO and stipulated that he was aware of it. The state introduced 12 exhibits and the testimony of five witnesses: M.L.B., the two students who saw Andersen at the Highland Hills complex on April 24, 2018, Officer McClinton, and a university employee who performed an internal investigation. Andersen did not testify and did not present any other evidence.

In his closing argument, Andersen's attorney argued, in part, that the state had not proved that Andersen knew where M.L.B. lived. After closing arguments, the district court questioned counsel as to whether the state is required to prove that Andersen knew the location of M.L.B.'s residence. The district court asked counsel to submit supplemental briefing on that issue, and they did so. In March 2019, the district court found Andersen guilty on count 1, the charge relating to April 24, 2018, and not guilty on count 2, the charge relating to a later date. The district court imposed a sentence of three days in jail, with credit for time served, and a $100 fine.

In June 2019, Andersen filed a notice of appeal. Five days later, the district court filed an order with specific findings of fact, as permitted by rule 26.01, subdivision 2(c), of the rules of criminal procedure. The district court found that Andersen was within 100 feet of M.L.B.'s residence on April 24, 2018. The district court also found that "Defendant's explanation that he was walking in the area for the purpose of going to lunch [is] credible." The district court further found that the state did not prove beyond a reasonable doubt that Andersen knew where M.L.B. resided on April 24, 2018, and that

"the evidence does not prove that Defendant had notice or knowledge of the location of [M.L.B.'s] residence."

ISSUE

If the state seeks to prove that a defendant committed the crime of violating a harassment restraining order by being within a certain distance of a protected person's residence, must the state prove that the defendant knew the location of the protected person's residence?

ANALYSIS

Andersen argues that the evidence is insufficient to sustain his conviction. Andersen's argument is not focused on the quantum and quality of the evidence; rather, it is focused on what the state is required to prove to establish his guilt. In such an appeal, this court's task is to ascertain the applicable law. In doing so, we apply a *de novo* standard of review to the district court's interpretation of the applicable law. *See State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016).

A.

"A person who is a victim of harassment may seek a restraining order from the district court . . . ." Minn. Stat. § 609.748, subd. 2 (2016). In this context, harassment is defined by statute to include, among other actions, "a single incident of physical or sexual assault" and "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another." *Id.*, subd. 1(a)(1); *see also Peterson v. Johnson*, 755 N.W.2d 758, 761-62 (Minn. App. 2008). Upon the filing of a petition, and after a

hearing, a district court "may issue a restraining order that . . . (1) orders the respondent to cease or avoid the harassment of another person; or (2) orders the respondent to have no contact with another person." Minn. Stat. § 609.748, subd. 5(a); *see also id.*, subd. 3. Such a restraining order is typically called a harassment restraining order, or HRO.[1] *See, e.g.*, *Crowley v. Meyer*, 897 N.W.2d 288, 290 (Minn. 2017).

The issuance of an HRO in a civil proceeding may lead to subsequent criminal charges if the respondent "knows of the order" and violates it. Minn. Stat. § 609.748, subd. 6(b). "A person who violates a restraining order . . . is subject to" criminal penalties. *Id.*, subd. 6(a). Any violation of an HRO is at least a misdemeanor. *Id.*, subd. 6(b). If a person violates an HRO "within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency," the violation is a gross misdemeanor.

[1]We note that the HRO statute does not expressly authorize a district court to issue an HRO that prohibits the respondent from being near the residence of the petitioner. Such a statutory provision is, however, found in a different but related statute, the Domestic Abuse Act, Minn. Stat. § 518B.01 (2020). Under that act, if there has been domestic abuse between members of a family or household, Minn. Stat. § 518B.01, subd. 2(a), and if one member of the family or household petitions for an order for protection (OFP), *id.*, subd. 4(a), a district court may, among other things, "exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner [or] *exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order*," *id.*, subd. 6(a)(2)-(3) (emphasis added). The HRO statute, in contrast, provides only that a district court "may issue a restraining order that . . . (1) orders the respondent to cease or avoid the harassment of another person; or (2) orders the respondent to have no contact with another person." Minn. Stat. § 609.748, subd. 5(a). Because this appeal arises from Andersen's criminal conviction, not from the issuance of the HRO, we express no opinion as to whether paragraph 1.C. of the HRO is authorized by section 609.748, subdivision 5(a). We assume without deciding that paragraph 1.C. of the HRO is a permissible means of ordering Andersen to have no contact with M.L.B.

Id., subd. 6(c). And if certain other aggravating factors are present, the violation is a felony. *Id.*, subd. 6(d).

In this case, the state charged Andersen with a misdemeanor. The state alleged that, on April 24, 2018, Andersen violated paragraph 1.C. of the August 18, 2017 HRO, which "prohibited [him] from being within 100 feet of Petitioner's home, the address of which is confidential." The district court found Andersen guilty despite specifically finding that the state did not prove beyond a reasonable doubt that Andersen knew where M.L.B. lived on April 24, 2018, and despite specifically finding that Andersen did not have notice or knowledge of the location of M.L.B.'s residence. Because the state has not challenged the district court's specific findings of fact in any way, we take them as given. The question on appeal is whether the state was required to prove that Andersen knew the location of M.L.B.'s residence when he walked through the Highland Hills apartment complex on April 24, 2018.

B.

The statute setting forth the offense of which Andersen was convicted does not expressly require the state to prove that a defendant knew the location of a place where the defendant was prohibited from being present. The pertinent parts of the statute state, "A person who violates a restraining order issued under this section is subject to [criminal] penalties," and "when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor." Minn. Stat. § 609.748, subd. 6(a), (b).

Even in the absence of statutory language expressly requiring the state to prove that a defendant knew a particular fact, the courts of Minnesota and other states, as well as the federal courts, generally have imposed such a requirement as a matter of common law. Our supreme court has explained the historical background in a way that is particularly useful to our resolution of this appeal:

> Mens rea is the element of a crime that requires "the defendant know the facts that make his conduct illegal." *Staples v. United States*, 511 U.S. 600, 605, 114 S. Ct. 1793, 1797 (1994). The mens rea requirement is "firmly embedded" in the common law. *Id.* "[T]he existence of a mens rea requirement is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *United States v. United States Gypsum Co.*, 438 U.S. 422, 436, 98 S. Ct. 2864, 2873 (1978) (quotation omitted). Statutes that dispense with mens rea and "do not require the defendant to know the facts that make his conduct illegal" impose strict criminal liability. *Staples*, 511 U.S. at 606, 114 S. Ct. at 1797. The Supreme Court of the United States has stated that "offenses that require no mens rea generally are disfavored." *Id.* (citing *Liparota v. United States*, 471 U.S. 419, 426, 105 S. Ct. 2084, 2088 (1985)).
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> Based on the strength of the common law rule requiring a mens rea element in every crime, the Supreme Court has determined that statutory silence is typically insufficient to dispense with mens rea. When a criminal statute is silent as to a mens rea requirement, this silence "does not necessarily suggest that Congress intended to dispense with a conventional mens rea element." *Staples*, 511 U.S. at 605, 114 S. Ct. at 1797. Instead, some positive indication of legislative intent is required to dispense with mens rea. *See id.* at 620, 114 S. Ct. at 1804 (stating that if Congress had intended to impose strict liability, "it would have spoken more clearly to that effect"); *Gypsum*, 438 U.S. at 438, 98 S. Ct. at 2874 ("Certainly far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement.").

. . . .

> The Supreme Court has recognized that in limited circumstances a legislature may dispense with mens rea through silence—in statutes creating "public welfare" offenses. *See Staples*, 511 U.S. at 606-07, 114 S. Ct. at 1797-98. For such offenses, a legislature may "impose a form of strict criminal liability through statutes that do not require the defendant to know the facts that make his conduct illegal." *Id.* at 606, 114 S. Ct. at 1797. When interpreting public welfare statutes, the Court "infer[s] from silence that Congress did not intend to require proof of mens rea to establish an offense." *Id.*

State v. Ndikum, 815 N.W.2d 816, 818-19 (Minn. 2012).

Thus, the general common-law rule that proof of mens rea is required in a criminal prosecution applies unless one of two exceptions applies. *See id.* The first exception applies if the statute setting forth the offense clearly provides that the state need not prove mens rea with respect to any or all of the elements of the offense. *See id.* The second exception applies if the offense charged is within the category of offenses called "public welfare offenses." *See id.* at 819-20.

To resolve the issue raised by Andersen on appeal, we must consider whether the offense of which Andersen is convicted is within either exception to the general common-law rule that proof of mens rea is required.

C.

We first consider whether the statute setting forth the offense satisfies the first exception by clearly providing that the state need not prove mens rea with respect to any or all of the elements of the offense. *See id.* at 818-19. Under the general common-law rule, there is a strong presumption that all crimes carry a mens rea element. *Id.* at 818.

Accordingly, if the legislature intends to create a strict-liability offense, it "should say so directly and unequivocally." *In re Welfare of C.R.M.*, 611 N.W.2d 802, 805, 809 (Minn. 2000).

Nothing in section 609.748, subdivision 6, speaks directly to the issue of mens rea. The statute does not expressly provide that the state is relieved of its obligation to prove a defendant's knowledge of the facts that make his or her actions a crime. As the United States Supreme Court has stated in explaining the federal common-law rule, "far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 438, 98 S. Ct. 2864, 2874 (1978). Rather, "some positive indication of legislative intent is required to dispense with mens rea." *Ndikum*, 815 N.W.2d at 818-19. In this case, the statutory silence indicates that the legislature did not intend to dispense with the mens rea requirement with respect to the offense of violating an HRO.

Notwithstanding the absence of any language in the statute concerning mens rea, the state contends that the legislature has "made crystal-clear its intent that HRO violations do not require the defendant to know he is in violation." The state's contention is based on an amendment to the next two paragraphs of the same subdivision of the statute, which govern prosecutions for gross-misdemeanor and felony violations of an HRO. Before 2013, those paragraphs provided that a respondent must "knowingly violate" an HRO to be found guilty of a gross misdemeanor or a felony. Minn. Stat. § 609.748, subd. 6(c)-(d) (2012). In *State v. Gunderson*, 812 N.W.2d 156 (Minn. App. 2012), which arose from a felony-level violation of an HRO, this court concluded that the district court erred by not

instructing the jury on the "knowingly" element of the offense. *Id.* at 161-62. The following year, the legislature and the governor amended paragraphs (c) and (d) by deleting the word "knowingly" from those two paragraphs. 2013 Minn. Laws. ch. 47, § 4, at 206. By referring to this amendment, the state apparently contends that the legislature's deletion of the "knowingly" requirement from paragraphs (c) and (d), as well as the consistent absence of the word in paragraphs (a) and (b), indicates that the legislature intended to relieve the state of the obligation to prove any knowledge other than knowledge of the HRO, which is required by paragraph (a).

The state's argument appears to implicate the canon of statutory interpretation that the meaning of a statute sometimes may be discerned by referring to former versions of the statute. *See, e.g.*, *Auto Owners Ins. Co. v. Perry*, 749 N.W.2d 324, 328 (Minn. 2008); *State v. Holmes*, 787 N.W.2d 617, 622-23 (Minn. App. 2010). But that canon and other canons generally must yield to the longstanding common-law presumption that a mens rea requirement is inherent in every crime, a presumption that is, in effect, a substantive canon of statutory interpretation. *See, e.g.*, *Rehaif v. United States*, 139 S. Ct. 2191, 2195-99 (2019); *Ndikum*, 815 N.W.2d at 819; *State v. Al-Naseer*, 734 N.W.2d 679, 683-86 (Minn. 2007); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 303-12 (2012). In this case, the common-law presumption leads to the conclusion that the legislature, which is presumed to be aware of the presumption, did not intend to relieve the state of the need to prove mens rea.

Thus, the statute is not within the first exception to the general common-law rule that proof of mens rea is required.

D.

We next consider whether the statute setting forth the offense satisfies the second exception on the ground that the offense is within the category of offenses known as "public welfare offenses." *See Ndikum*, 815 N.W.2d at 819-20.

The United States Supreme Court first recognized the existence of "public welfare offenses" in *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240 (1952). The Court explained that, in the modern era, states have deviated from the general common-law rule requiring mens rea due to the increasing need for government regulation of mechanized forms of industry, new sources of energy, greater volumes and speeds of traffic, greater population density in cities, and wider distribution of consumer goods affecting health and safety. *Id.* at 253-55, 72 S. Ct. at 244-45. The risks and dangers of these developments led to "increasingly numerous and detailed regulations which heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare." *Id.* at 254, 72 S. Ct. at 245. These modern regulations usually are enforced only with "strict civil liability" but, with increasing frequency, "lawmakers . . . have sought to make such regulations more effective by invoking criminal sanctions to be applied by the familiar technique of criminal prosecutions and convictions." *Id.* at 254-55, 72 S. Ct. at 245-46. "Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize," and lawmakers might choose to criminalize violations because "their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted." *Id.* at 255-56, 72 S. Ct. at 246. "Hence, legislation applicable to

such offenses, as a matter of policy, does not specify intent as a necessary element." *Id.* at 256, 72 S. Ct. at 246. Proof of mens rea is not required in such cases because "[t]he accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities," and because "penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation." *Id.* at 256, 72 S. Ct. at 246. Consequently, "courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime." *Id.* at 256, 72 S. Ct. at 246. The United States Supreme Court has emphasized the regulatory nature of public-welfare offenses by describing them as "cases involving statutory provisions that form part of a 'regulatory' or 'public welfare' program.'" *Rehaif*, 139 S. Ct. at 2197; *see also C.R.M.*, 611 N.W.2d at 806 (referring to "'public welfare' or 'regulatory offenses'").

In Minnesota, the supreme court and this court have recognized that certain crimes arising from regulatory schemes fall within the "public welfare" or "regulatory" category. *See State v. Loge*, 608 N.W.2d 152, 157-59 (Minn. 2000) (keeping open bottle of intoxicating liquor in automobile on public highway); *State v. Schwartz*, ___ N.W.2d ___, ___, 2020 WL 1845250, at *4 (Minn. App. Apr. 13, 2020) (driving motor vehicle while impaired by controlled substance), *pet. for review filed* (Minn. May 13, 2020); *State v. Rohan*, 834 N.W.2d 223, 230 (Minn. App. 2013) (serving alcohol to underage person in bar or restaurant), *review denied* (Minn. Oct. 15, 2013); *State v. Mayard*, 573 N.W.2d 707,

709-10 (Minn. App. 1998) (failing to provide proof of insurance of vehicle), *review denied* (Minn. Mar. 19, 1998).

The most recent supreme court opinion in Minnesota on the subject arose from a prosecution for gross-misdemeanor possession of a pistol in public without a permit. *Ndikum*, 815 N.W.2d at 817, 820-22. The defendant in that case testified that he did not know that there was a pistol in the briefcase he was carrying when he entered a courthouse. *Id.* at 817. On appeal, he challenged the jury instructions, which relieved the state of the obligation to prove that he knew that he was carrying a pistol. *Id.* at 818. The supreme court reviewed the traditional common-law rule concerning mens rea as well as the two exceptions to the rule, which are described above. *Id.* at 818-20. The supreme court focused on the exception for public-welfare offenses, explaining that, "in limited circumstances a legislature may dispense with mens rea through silence" because "[f]or such offenses, a legislature may 'impose a form of strict criminal liability through statutes that do not require the defendant to know the facts that make his conduct illegal.'" *Id.* at 819 (quoting *Staples v. United States*, 511 U.S. 600, 606, 114 S. Ct. 1793, 1797 (1994)).

To determine whether the offense of which Ndikum was convicted was a public-welfare offense, the supreme court considered two factors. First, the supreme court asked "whether a gun possessor should have been on notice that possession of a gun was subject to strict regulation." *Id.* at 820. The supreme court determined that "the statute . . . does not put gun owners on notice of stringent regulation," which indicated that the statute "was not a public welfare statute." *Id.* at 822. Second, the supreme court stated that "the penalty imposed for a violation" of the statute setting forth the offense is "'a significant

consideration in determining whether the statute should be construed as dispensing with mens rea.'" *Id.* at 822 (quoting *Staples*, 511 U.S. at 616, 114 S. Ct. at 1802). Specifically, the supreme court noted that public-welfare offenses "have historically been punished by 'fines or short jail sentences, not imprisonment in the state penitentiary.'" *Id.* at 822 (quoting *Staples*, 511 U.S. at 616, 114 S. Ct. at 1802). But the offense in *Ndikum* was a gross misdemeanor on a first violation and could be enhanced to a felony in some circumstances. *Id.* at 822. Accordingly, the supreme court determined that the applicable sentences were "severe punishments incompatible with a public welfare offense." *Id.* at 822.

It may not be necessary or appropriate to apply the two-factor test of *Ndikum* to determine whether the offense of which Andersen was convicted is a public-welfare offense. It is obvious that the statute setting forth the crime of violating an HRO is neither regulatory in nature nor concerned with public welfare. The statute is not concerned with "industries, trades, properties or activities that affect public health, safety or welfare." *See Morissette*, 342 U.S. at 254, 72 S. Ct. at 245. Rather, it is concerned with "physical or sexual assault" and "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another," Minn. Stat. § 609.748, subd. 1(a)(1), subjects that are similar to the common-law crimes that historically have required proof of mens rea, *see Morissette*, 342 U.S. at 255, 72 S. Ct. at 246. The statute is not concerned with conduct that "merely create[s] the danger or probability of" "direct or immediate injury." *Id.* at 256, 72 S. Ct. at 246. Rather, it is concerned with conduct that violates the rights of

the particular person who is protected by an HRO. Thus, we are inclined to conclude that, for these reasons alone, the crime of violating an HRO is not a public-welfare offense.

In any event, we reach the same conclusion by applying the two-factor test of *Ndikum*. The first factor is whether a defendant is on notice that his or her conduct would lead to strict criminal liability. *See* 815 N.W.2d at 820. The statute, by itself, requires an HRO to include "conspicuous notice" of "the specific conduct that will constitute a violation of the order" as well as the maximum penalties of misdemeanor, gross-misdemeanor, or felony violations. Minn. Stat. § 609.748, subd. 8(a)(1)-(2). If we were to consider only the statute, we would conclude that a person restricted by an HRO must be, and is presumed to be, on notice that a violation of an HRO is subject to strict criminal liability. But the statute alone does not fully define the conduct that is a crime. In any particular case, the statute and an HRO work together to define the criminal conduct. Accordingly, we must look to both the statute and the HRO to determine whether Andersen had sufficient notice of the conduct that would subject him to strict criminal liability.

The record reflects no doubt that Andersen had notice of the HRO and its contents. The HRO stated that Andersen was prohibited from having "direct or indirect contact with" M.L.B. and was "prohibited from being within 100 feet of [M.L.B.'s] job site at" a specified address. The HRO also stated that Andersen was prohibited from "being within 100 feet of Petitioner's home, the address of which is confidential." Consistent with the statute, the HRO conspicuously stated that "[a]ny conduct . . . in violation of the specific provisions provided in Section 1 above constitutes a violation of" the HRO, that he could be arrested and taken to jail "if a police officer believes that [he] has violated" the HRO,

and that a violation of the HRO "may be treated as" a crime and "may result in" a criminal sentence. But, importantly, the HRO did not give Andersen notice of the location of M.L.B.'s residence, even though he was prohibited from being within 100 feet of it. Indeed, the district court specifically found that "the evidence does not prove that Defendant had notice or knowledge of the location of [M.L.B.'s] residence." Thus, Andersen did not have notice of all of the facts that might result in his criminal liability.[2]

The second factor is whether the penalties imposed for violations of HROs are compatible with public-welfare offenses. *See* 815 N.W.2d at 822. A violation of an HRO is at least a misdemeanor. Minn. Stat. § 609.748, subd. 6(a), (b). In certain circumstances, a violation may be enhanced to a gross misdemeanor or a felony and punishable by prison

[2]Andersen's brief states that section 609.748 "allows a petitioner to request that the petitioner's address remain confidential." At oral argument, the state agreed. At the conclusion of oral argument, we asked counsel to submit letters with citations to supplemental authorities relevant to the issue. *See* Minn. R. Civ. App. P. 128.05. The state submitted a letter citing an opinion of the United States Supreme Court, an opinion of the Minnesota Supreme Court, and a rule of public access to court records. Andersen submitted a letter stating that he had no additional citations. We have reviewed the cited authorities and believe that none of them is relevant. We note, however, that chapter 5B of the Minnesota Statutes might, in certain circumstances, allow—and perhaps even require—a district court to maintain the confidentiality of the location of a protected person's residence. In short, a person may apply for participation in the state's address-confidentiality program. Minn. Stat. § 5B.03 (2018 & Supp. 2019). An applicant is eligible for participation only if, among other things, the applicant "is a victim of domestic violence, sexual assault, or harassment or stalking." Minn. Stat. § 5B.03, subd. 1(2)(i). The term "harassment or stalking" is defined by that statute to mean "acts criminalized under section 609.749," including "a threat of such acts committed against an individual." Minn. Stat. § 5B.02(h) (2018 & Supp. 2019). If a participant's home address is protected by statute, "no person or entity shall be compelled to disclose the participant's actual address during the discovery phase of or during a proceeding before a court or other tribunal," unless the court finds that an exception applies. Minn. Stat. § 5B.11 (2018). In this case, there is no indication that M.L.B. attempted to invoke the provisions of chapter 5B.

sentences and larger fines. *Id.*, subd. 6(c), (d). These are the types of penalties that the supreme court has said are "incompatible" with a public-welfare offense. *Ndikum*, 815 N.W.2d at 822. Thus, both of the *Ndikum* factors lead to the conclusion that a criminal violation of an HRO is not a public-welfare offense.

This conclusion is consistent with the supreme court's opinion in *C.R.M.*, which concerned the prosecution of a juvenile on a charge of possession of a dangerous weapon on school property. 611 N.W.2d at 803-04. After determining that the offense is not a public-welfare offense, the supreme court concluded that the state "was required to prove that [C.R.M.] knew he possessed the knife on school property." *Id.* at 810. The supreme court later explained that the state was required to prove C.R.M.'s knowledge of *both* his possession of the knife *and* his presence on school property because the juvenile was charged with a type of possession that "only becomes criminal in certain locations," as opposed to a type of possession "that is criminal independent of the location." *State v. Benniefield*, 678 N.W.2d 42, 48 (Minn. 2004) (citing *C.R.M.*, 611 N.W.2d at 809-10). Similarly, in this case, Andersen was found guilty of a crime solely because of his presence in a particular place. He was not in possession of any contraband and was not alleged to have engaged in any conduct that, in itself, would be criminal. Thus, the statute is not within the second exception to the general common-law rule that proof of mens rea is required.

In sum, the state was required to prove that Andersen knew that his presence in a particular location would subject him to criminal liability.[3]

D E C I S I O N

Because the state was required to prove that Andersen knew the location of M.L.B.'s residence, the evidence is insufficient to sustain the conviction.

Reversed.

[3]At oral argument, the state argued that, if Andersen were to prevail in this appeal, HROs would not be effective in ensuring the safety, security, and privacy of the persons who are protected by them. The state argued that, to fulfill the purposes of the HRO statute, it sometimes is necessary to conceal the location of the protected person's residence from the restrained person. We believe that there are ways to both maintain the confidentiality of the location of the protected person's residence and ensure that the respondent has notice of the conduct that may lead to criminal liability. For example, a district court could follow the approach specified in the Domestic Abuse Act by "exclud[ing] the [respondent] from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order." *See* Minn. Stat. § 518B.01, subd. 6(a)(2)-(3). This could be done by, for example, using geographical boundaries to define an area that includes the confidential location.