STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1532

State of Minnesota,
Respondent,

vs.

Cayla Jean Sandven,
Appellant.

Filed November 1, 2021
Affirmed
Bratvold, Judge

Kandiyohi County District Court
File No. 34-CR-19-211

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

Shane D. Baker, Kandiyohi County Attorney, Julianna Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from a final judgment of conviction for violating a harassment restraining order (HRO), appellant argues the evidence was insufficient to prove she knew delivering a letter to her sister's home would violate the HRO, the district court plainly

erred by omitting a mens rea element from the jury instructions, and the prosecutor committed misconduct in closing arguments. Because the evidence is sufficient to sustain appellant's conviction, and because we determine the alleged errors in the jury instructions and in the prosecuting attorney's rebuttal argument fail to warrant a new trial, we affirm.

FACTS

Respondent State of Minnesota charged appellant Cayla Jean Sandven with one count of violating a harassment restraining order under Minn. Stat. § 609.748, subd. 6(b) (2018). The following summarizes the evidence presented during Sandven's jury trial.

In April 2017, a district court conducted an evidentiary hearing and issued an HRO against Sandven and on behalf of C.C. (sister). The HRO included factual findings that Sandven "engaged in harassment" of sister by making "contin[uous] and harassing and profane texts" and calling sister "abusive and profane names." The HRO also stated Sandven's harassment "has or is intended to have a substantial adverse effect on [sister's] safety, security, or privacy."

The HRO provided that Sandven have "no direct or indirect contact with [sister], including any visits to or phone calls to [sister], contact via electronic means such as email or social networking sites." The HRO stated that violation of this order "may be treated as a misdemeanor, gross misdemeanor, or felony" level offense. The HRO also provided it "shall remain in effect until March 17, 2019." Before her jury trial, Sandven stipulated she "knew of" the HRO at the time of the alleged violation.

In January 2019, sister reported a violation of the HRO to the Kandiyohi sheriff's office. Sister testified that Sandven "wrote up and dropped off [a letter] at the residence

where [sister] was living" with her parents in New London.[1] The letter, received as a trial exhibit, was dated January 23, 2019, addressed to sister, signed by Sandven, and notarized. The letter asserted sister's child "verbally and physically abused" Sandven's child while they were at the New London family home and on the school bus. The letter also stated sister had been negligent "in handling the situations of abuse," and "a few incidents [were] reported to the Kandiyohi Sherriff's Department," which did not provide "further assistance to resolve [the] issues." Sister was not at home when Sandven dropped off the letter. When sister returned home, she saw the letter and "called the Sheriff's Office."

A deputy went to Sandven's home and spoke with her for "about 20 minutes." Sandven had a copy of the letter, which she showed to the deputy and said was hers. The deputy testified Sandven said, "she left [the letter] at . . . her parents' residence." Sandven "appeared to be upset" and "kind of referring to things being unfair . . . at their parents' house." Sandven told the deputy that the HRO "was still valid." In response to questions, the deputy agreed Sandven said she "did it"; the deputy added that Sandven said she "didn't care."

During cross-examination, Sandven's attorney asked the deputy whether Sandven said she was "aware she was violating" the HRO. The deputy responded Sandven "did not say the word violation that I can recall."

[1] The HRO prohibited Sandven from "being within 200 feet of [sister's] home," but it listed an address different from the New London home. Sister testified she moved in with her parents. Sandven did not dispute knowing sister lived with their parents.

The jury found Sandven guilty of violating the HRO. The district court imposed a sentence of 90 days, stayed the sentence for one year, and ordered Sandven to complete 30 hours of community service, have no contact with sister, and remain law-abiding.

Sandven appeals.

DECISION

Sandven raises three issues on appeal. First, she argues her conviction should be reversed because the state failed to prove beyond a reasonable doubt that she knew her conduct would violate the HRO. Second, in the alternative, Sandven argues she should have a new trial because the district court plainly erred in the jury instructions by omitting the mens rea element. Third, Sandven argues the prosecutor committed misconduct during rebuttal argument, violating her substantial rights. We address each issue in turn.

I. The evidence is sufficient to sustain Sandven's conviction for violating the HRO.

When considering a sufficiency-of-the-evidence challenge, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). Appellate courts view the evidence "in the light most favorable to the verdict," assuming the jury disbelieved any contradictory evidence. *Id.* An appellate court may not overturn a verdict if the jury could have reasonably found the defendant guilty of the charged offense. *Id.*

A person commits a crime if she knows of and violates the terms of an HRO. *See* Minn. Stat. § 609.748, subd. 6(a), (b). In a recent appeal involving a conviction for violating an HRO, this court held "the state must prove that the defendant knew all the facts that would cause him or her to be in violation of a harassment restraining order." *State v. Andersen*, 946 N.W.2d 627, 628 (Minn. App. 2020).

Sandven's sufficiency challenge relies on a close analysis of *Andersen*, so we begin by considering that opinion. In *Andersen*, the HRO prohibited the appellant from being within 100 feet of a protected person's residence but it did not state where the protected person resided. *Id.* at 628. Based on evidence that the appellant was "approximately 30 feet away from" the protected person's apartment, the state charged appellant with violating an HRO. *Id.* at 630.

The district court convicted the appellant after a bench trial, issuing written findings of fact stating (1) the appellant's explanation for being in the area of the protected person's home was credible, (2) the state did not prove beyond a reasonable doubt that the appellant knew where the protected person lived, and (3) "the evidence does not prove that [appellant] had notice or knowledge of the location of [the protected person's] residence." *Id.* at 630. An appeal followed. Because we determined "the state was required to prove that [the appellant] knew that his presence in a particular location would subject him to criminal liability," and the district court found no record evidence to support this, we reversed the conviction. *Id.* at 637–38.

Relying on *Andersen*, Sandven argues the state must prove Sandven's mens rea such that she "knew the facts that placed her in violation of the" HRO, but argues the

circumstantial evidence shows Sandven "honestly believed that her behavior did not violate the order." Sandven also argues "[a]ny theory that [she] possessed the necessary mens rea must rest on circumstantial evidence." The state disagrees, arguing direct evidence supports the conviction and Sandven "fundamental[ly] misunderstand[s]" *Andersen* to require evidence of a defendant's subjective belief.

We agree with the state that *Andersen* does not require the state to prove a defendant "subjectively believed that the specific conduct she engaged in violated the order." *Andersen* did not discuss a defendant's subjective belief. *See* 946 N.W.2d at 627–38. Still, *Andersen* rests on the premise that "[m]ens rea is the element of a crime that requires 'the defendant *know the facts* that make [her] conduct illegal.'" *Id.* at 632 (quoting *Staples v. United States*, 511 U.S. 600, 605 (1994)) (emphasis added). The state may prove Sandven knew her conduct violated the HRO by offering direct or circumstantial evidence. *See State v. Gunderson*, 812 N.W.2d 156, 161 (Minn. App. 2012) ("[P]roof of knowledge may be by circumstantial evidence.") (quoting *State v. Al-Naseer*, 734 N.W.2d 679, 688 (Minn. 2007) (internal quotations omitted)).

The state is correct that this record includes some direct evidence of Sandven's knowledge or mens rea. For example, Sandven admitted to the deputy that she left the letter for sister at her parent's house where Sandven knew sister lived, she knew the HRO was valid, and she told the deputy when questioned that she "did it" and "didn't care." *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (stating defendant's comment "was direct evidence of her mens rea"). But because the record also contains circumstantial evidence and a defendant's state of mind is "generally proven through circumstantial evidence," *see*

State v. Leake, 699 N.W.2d 312, 319 (Minn. 2005), we consider whether the circumstantial evidence is sufficient to sustain Sandven's conviction.

We apply "heightened scrutiny" to our review of the circumstantial evidence against Sandven. *See State v Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). First, we "identify the circumstances proved" with deference to the jury's factual determinations; second, we "examine independently" the reasonableness of any inference drawn from those determinations. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). If there is "any rational hypothesis" inconsistent with appellant's guilt, or consistent with appellant's innocence, we must reverse the conviction. *Id.*

The state proved these circumstances: A valid HRO prohibited Sandven from having "direct or indirect contact" with sister, including no visits, phone calls, or contact via electronic means, such as email or social networking websites. Sandven signed a letter to sister, had the letter notarized, and left it at sister's current residence. Sandven gave a copy of the letter to a deputy, told the deputy she knew the HRO was "still valid" and that she "did it" and she "didn't care."

Sandven does not dispute these proven circumstances are consistent with her guilt. Instead, she argues the circumstances "support a reasonable inference that [she] did not know that her conduct of delivering a notarized document to her parents' residence would subject her to criminal liability." Sandven offers two alternative inferences, which she contends are inconsistent with her knowing "the facts" that caused her to violate the order.

First, Sandven argues the HRO was confusing and "[i]t was rational for Ms. Sandven to believe that the order permitted her to prepare and deliver a formal written

affidavit" because the order did not list a notarized letter as one of the prohibited methods of contact. We acknowledge the HRO states Sandven "shall have no direct or indirect contact" with sister, and then "includ[es]" examples of prohibited contact and does not mention a letter. Still, we are not persuaded by Sandven's argument. While the HRO does not expressly "include" letters as a prohibited form of contact, the word "include" is *not* a limiting term. Rather, "include" suggests a non-exclusive list. *See LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) ("The word 'includes' is not exhaustive or exclusive."). It is also irrational for Sandven to believe the HRO permitted her to deliver a letter to sister's home because the HRO explicitly prohibited "direct or indirect contact" and specifically identified no email contact.

Second, Sandven argues her "conduct strongly suggests that she honestly believed that her behavior did not violate the order" because she notarized the letter, showed the letter to the deputy, and did not conceal her conduct. We disagree because this hypothesis ignores other proven circumstances. Sandven told the deputy the HRO was "still valid," agreed she delivered the letter, and told the deputy she "didn't care." Taking together all the proven circumstances, it is irrational to infer Sandven did not know the facts that caused her to violate the HRO.

We therefore conclude no reasonable alternative hypothesis based on the proven circumstances is inconsistent with Sandven's guilt. The state proved beyond a reasonable doubt Sandven knew all the facts that caused her to violate the HRO. Thus, the record is sufficient to sustain her conviction.

II. Any error in the jury instructions did not prejudice Sandven.

Sandven alternatively argues the jury instructions were plainly erroneous and warrant a new trial. Because Sandven's attorney did not object to the jury instructions during trial, we review for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under this standard, the appellant bears the burden of establishing (1) an error occurred, (2) the error was plain, and (3) the error affected appellant's substantial rights. *Id.*

Here, the district court instructed the jury:

> Under Minnesota law, whoever violates a harassment restraining order and knows of the order is guilty of a crime.
>
> The elements of violation of a harassment restraining order are: first, there was an existing court order restraining Defendant from harassing [sister]. Second, the Defendant violated a term or condition of the order. *Third, the Defendant knew of the order. Here, the parties agree that Defendant knew of the order. Therefore, you must consider this element to have been proven beyond a reasonable doubt.* Fourth, the Defendant's act took place on or about January 23, 2019, in Kandiyohi County.

(Emphasis added.) This instruction follows the statutory language, *see* Minn. Stat. § 609.748, subd. 6(b), and mirrors the pattern jury instruction. *See* 10 *Minn. Practice*, CRIMJIG 13.65 (2020).[2] Because Sandven stipulated she "knew of the restraining order,"

[2] We note the current pattern jury instruction for violating an HRO includes a cautionary note: "this model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Andersen*, 946 N.W.2d 627 (Minn. Ct. App. 2020)." We also note, "the CRIMJIGs are not precedential or binding." *See Gunderson*, 812 N.W.2d at 162 (quotation omitted).

which is the third element, the district court instructed the jury that they "must consider this [third] element to have been proven beyond a reasonable doubt."

Sandven argues, "the district court failed to instruct the jury that it must find the evidence proved beyond a reasonable doubt that Ms. Sandven acted with the necessary mens rea" as explained in *Anderson*. The state argues the instructions were not plainly erroneous, and even if they were, they did not affect Sandven's substantial rights.

An error is plain if it is clear or obvious, usually where the error contravenes case law, a rule, or a standard of conduct. *State v. Matthews*, 779 N.W.2d 543, 549–50 (Minn. 2010). We agree with Sandven that *Anderson,* which was issued about four months before Sandven's trial, used the term "mens rea element" throughout the opinion. *See Anderson*, 946 N.W.2d at 632–33. But *Anderson* involved a court trial and examined the sufficiency of evidence to support a conviction for violating an HRO. *Id.* at 630 (summarizing the district court's written findings after a bench trial and stating appellant "argues that the evidence is insufficient to sustain his conviction"). *Andersen* did not discuss or consider jury instructions, nor did *Anderson* articulate a clear or obvious rule of law for instructing the jury. In short, Sandven argues that, although the challenged jury instruction followed the statutory language and mirrored the pattern instruction for the charged offense, it was plainly erroneous.[3]

[3] Sandven cites *State v. Irby*, 957 N.W.2d 111, 121 (Minn. App. 2021) *rev. granted* (Minn. May 26, 2021), and *Gunderson*, 812 N.W.2d at 162. We distinguish both cases from Sandven's case. In *Irby*, this court determined a jury instruction was plain error because it did not follow 1984 caselaw on the knowledge element of the offense. 957 N.W.2d at 121 (citing *State v. Ibarra*, 355 N.W.2d 125, 129 (Minn. 1984). In *Gunderson*, we held a jury instruction was plain error because it did not track the plain language of the charging

But we need not decide whether the jury instructions were plainly erroneous because Sandven's substantial rights were not affected. To show an error affected an appellant's substantial rights, appellant must bear the "heavy burden" of showing a "reasonable likelihood" the error affected the jury's verdict. *Griller*, 583 N.W.2d at 741. "An erroneous jury instruction will not ordinarily have a significant effect on the jury's verdict if there is considerable evidence of the defendant's guilt." *State v. Kelley*, 855 N.W.2d 269, 283–84 (Minn. 2014). As discussed above, there was considerable evidence that Sandven knew of all the facts causing her to violate the HRO. Thus, even if the jury instructions were plainly erroneous, the error did not affect Sandven's substantial rights.

III. The prosecuting attorney's misconduct did not affect Sandven's substantial rights.

Sandven also seeks a new trial by challenging the prosecuting attorney's arguments during rebuttal as prosecutorial misconduct. Because Sandven did not object to the prosecuting attorney's arguments, we review for plain error. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). In this context, if appellant shows a plain error occurred, then the "burden . . . shift[s] to the state to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights." *Id*. Sandven challenges three of the prosecuting attorney's arguments, which we address in turn.

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statute. 812 N.W.2d at 160 (citing Minn. Stat. § 609.748, subd. 6). Here, the challenged instruction did not contradict established caselaw and it followed the charging statute.

A. Criticizing Sandven's failure to elicit testimony

Sandven argues, "[t]he prosecutor engaged in misconduct by shifting the burden of proof and criticizing the defense for not introducing evidence to support its claim that Ms. Sandven did not act with the necessary mens rea." Sandven points to the prosecuting attorney's argument that Sandven's attorney was "arguing that Ms. Sandven might have thought that this was a business communication." The prosecuting attorney continued:

> There's no evidence this was a business communication. . . . [Sister] was here. She testified. If she and Ms. Sandven were in some kind of business together, [Sandven's attorney] could've asked her questions about that, could've let you know oh this is the business they're in together, but that didn't happen because it's not true, because it's not there; there's no evidence of that.

Sandven concludes, "[b]y commenting on the defense's failure to question a witness and introduce evidence, the prosecutor engaged in misconduct."

It is true that a prosecuting attorney may not comment on a defendant's failure to call a witness. *State v. Mayhorn*, 720 N.W.2d 776, 787 (Minn. 2006). But a prosecuting attorney may respond to arguments made by the defense and highlight the evidence, or lack thereof, supporting the defense's theories without shifting the burden of proof. *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010); *see State v. Tayari-Garrett*, 841 N.W.2d 644, 652 (Minn. App. 2014) ("Having opened the door to the prosecutor's argument, appellant can hardly complain now.").

Sandven's attorney opened the door in closing by arguing that Sandven "honestly believed that these were viable business communications and that it was allowed." The

prosecuting attorney's rebuttal argument highlighted the lack of evidence to support the defense attorney's argument. Thus, this argument was not plainly erroneous.

B. Shifting the burden of proof to Sandven

Sandven argues the prosecuting attorney impermissibly "lessened the state's burden" during rebuttal. Sandven highlights the following part of the prosecuting attorney's argument:

> What [the deputy] said is that at no time did Ms. Sandven specifically state ["]I intentionally violated the order.["] *That's not proof beyond a reasonable doubt. That's etched in stone proof.* That's a full admission so don't be confused by someone saying because you didn't get a full admission it's not proof beyond a reasonable doubt. That's well beyond any reasonable doubt. No one expects full admissions. That's unreasonable. That's not a reasonable position to take at trial.

(Emphasis added.) This statement may be troubling because "[m]isstatements of the burden of proof are highly improper and would, if demonstrated, constitute prosecutorial misconduct." *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000). By arguing the state's burden of proof is not "etched in stone proof" and admissions are "well beyond any reasonable doubt," the prosecuting attorney may have minimized the state's burden of proof.

The state, however, claims this rebuttal argument responded to Sandven's attorney's closing argument. "The prosecutor has the right to fairly meet the arguments of the defendant." *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009). For example, in *State v. Simon*, the supreme court considered whether a prosecuting attorney's statement that the defense attorney took "every opportunity to dirty up [the business-victim] by accusing and

insinuating that they were violating some rule or regulation" rose to the level of misconduct. 745 N.W.2d 830, 844 (Minn. 2008). The supreme court reasoned, "[a] prosecutor is allowed to argue that there is no merit to a particular defense or argument." *Id.* Because the prosecution's statement "was designed to draw the jury's attention to [the appellant's] attempt to distract from the criminal issues at trial," the supreme court determined no misconduct occurred. *Id.*

Sandven's attorney argued in closing that Sandven "never once admitted to knowingly violating the restraining order" during her conversation with the deputy. Thus, whether the prosecuting attorney's rebuttal argument was plainly erroneous is a close question because it both comments on the burden of proof and responds to a defense argument.

But we need not determine whether the rebuttal argument was plainly erroneous if the argument did not have a "significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681–82 (Minn. 2007). In making this determination, appellate courts "consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Id.* at 682.

Here, the state's case is strong: Sandven wrote a letter to sister, notarized it, and left it at her parent's house, where she knew sister lived. The deputy testified Sandven stated that "she had left [the letter] at the residence that would have been [sister's] residence." The deputy also testified Sandven stated she knew of the HRO against her and the HRO was "still valid," Sandven said she "did it" and "didn't care." And the prosecuting

attorney's improper argument was not pervasive—the challenged comments comprise only two sentences from a seven-page closing argument. The challenged statement occurred during rebuttal, however, so the defense attorney had no opportunity to respond.

Finally, we consider whether the jury instruction mitigated any prejudicial effect. *See, e.g.*, *State v. McDonough*, 631 N.W.2d 373, 389 n.2 (Minn. 2001) (concluding prosecuting attorney's attempts to shift the burden of proof are often harmless when "the district court clearly and thoroughly instructed the jury regarding the burden of proof"). Here, the district court instructed the jury, "[i]t is your duty to decide the questions of fact in this case"; "[t]he burden of proving guilt is on the State. The Defendant does not have to prove innocence," and "[y]ou are the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony." And the prosecuting attorney repeated the state's burden to prove guilt beyond a reasonable doubt in its initial and rebuttal closing argument. *See State v. Tate*, 682 N.W.2d 169, 178–79 (Minn. App. 2004) (concluding prosecuting attorney's misstatement of the burden of proof was error, but was harmless because "taken as a whole, [the statements] do not indicate that the burden of proof was shifted").

Because the state's evidence against Sandven was strong and correct statements of law during the prosecuting attorney's argument, along with the jury instructions, mitigated any prejudicial effect, we determine the prosecuting attorney's rebuttal argument about the burden of proof did not have a substantial effect on the jury's verdict.

C. Contending Sandven's argument is "unreasonable"

Sandven contends—pointing to the same passage of rebuttal argument quoted above—the prosecuting attorney committed misconduct by arguing, "[n]o one expects full admissions. That's unreasonable. That's not a reasonable position to take at trial."

Sandven relies on *State v. Strommen* where the supreme court determined the prosecuting attorney committed plain error by arguing, "[w]hen we have difficult cases like this, sometimes the only way to deal with it is just to weigh the story in each hand and decide which one is most reasonable, which one makes the most sense." 648 N.W.2d 681, 685 (Minn. 2002). The supreme court explained this argument "was a misstatement of the state's burden to prove each element of the crime beyond a reasonable doubt." *Id.* at 690.

We conclude *Strommen* is not analogous to the challenged argument. The prosecuting attorney did not ask the jury to weigh the two theories of the case to determine which one was most reasonable. Rather, the prosecuting attorney's argument responded to Sandven's argument that she never admitted violating the HRO. Because a prosecuting attorney may argue there is no merit to a particular defense argument, *Martin*, 773 N.W.2d at 106, we conclude the challenged argument was not plainly erroneous.

In sum, the record evidence is sufficient to prove Sandven "knew all the facts that would cause . . . her to be in violation of the harassment restraining order." *See Anderson*, 946 N.W.2d at 628. We need not decide whether the district court's jury instructions were plainly erroneous because they did not prejudice Sandven. And similarly, the state met its burden to prove either that no misconduct occurred during rebuttal or that alleged instances

of prosecutorial misconduct did not affect Sandven's substantial rights. We therefore affirm.

Affirmed.