STATE OF MINNESOTA
IN COURT OF APPEALS
A10-648

State of Minnesota,
Respondent,

vs.

Scott Wade Ramey,
Appellant.

Filed April 12, 2011
Affirmed
Hudson, Judge

Freeborn County District Court
File No. 24-CR-09-1593

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

Craig S. Nelson, Freeborn County Attorney, David J. Walker, Assistant County Attorney, Albert Lea, Minnesota (for respondent)

Ted Sampsell-Jones, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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

HUDSON, Judge

Appellant challenges his conviction of felony violation of an order for protection (OFP), arguing that the evidence is insufficient to support his conviction because he did not knowingly violate the terms of the OFP. We affirm.

FACTS

The state charged appellant Scott Wade Ramey with one count of felony violation of an OFP, which had been issued for the benefit of appellant's former girlfriend, S.T. The OFP provided that appellant

> shall stay away from a reasonable area surrounding [S.T.'s] residence, as follows:
>
> [Appellant] is not to be within a one block radius of [S.T.'s] residence except as follows;
>
> 1. If [appellant] has matters to deal with at the Freeborn County Court Services Office he is to enter the building on the northeast corner of the building by the Law Enforcement Center entrance.
>
> 2. He is allowed to go to his scheduled appointments at the Department of Corrections office.

S.T.'s apartment building is located on College Street in downtown Albert Lea, about 30-50 feet west of the southwest corner of the intersection of College Street and Broadway Avenue. The Freeborn County Government Center is located on Broadway Avenue across the street and to the south of S.T.'s apartment building.

At appellant's jury trial, S.T. testified that about 4:00 p.m. on July 6, 2009, she called the Albert Lea Police Department because someone had left a flag in her mailbox. She testified that she went downstairs and waited for an officer for a few minutes. While she was waiting on the steps of her building, she saw appellant standing on Broadway. S.T. also observed appellant ride a bicycle around US Bank, which is located at the northeast corner of the College-and-Broadway intersection, drop the bicycle on the pavement, and speak to a young woman. She testified that when a responding officer

arrived, appellant stood looking directly across the street at her and watched her converse with the officer for about 15 minutes.

The responding officer testified that, while he was speaking to S.T., he saw appellant standing at the US Bank sign. He testified that appellant was "staring" at S.T. and the officer, with appellant's whole body "bladed" toward them. The officer then drove around the block, stopped near appellant, and spoke to him. Appellant was still standing in the same spot, talking to a young woman pushing a baby stroller, who told the officer she was looking for two lost children. The officer testified that when he asked appellant why he was there, appellant stated that he was allowed to visit the government center or the DOC office and that he had come from the government center to meet a friend. The officer testified that, based on his observation, he believed that appellant was within one block of S.T's residence. He testified that he arrested appellant because he was not going to or coming from the government center, but only standing there. The officer testified that he placed appellant under arrest about 20–25 minutes after he first made contact with S.T.

Before trial, the parties stipulated that appellant had an appointment at Freeborn County Court Services between 4:00 and 4:30 p.m. on that day. The district court instructed the jury that one element of the offense was that a person "knowingly violated a term or condition of the [OFP]" and that "to know requires only that the actor believes that the specified fact exists." The jury found appellant guilty, and this appeal follows.

D E C I S I O N

Appellant argues that the evidence is insufficient to support his conviction. When considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that "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). A reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

A person may be convicted of felony-level violation of an OFP if that person has had two or more previous qualified domestic-violence-related convictions and "knowingly violates" the terms of an OFP. Minn. Stat. § 518B.01, subd. 14(d)(1) (2008). Appellant stipulated to the existence of qualified previous domestic-violence-related convictions. But he argues that the state failed to prove beyond a reasonable doubt that he violated the terms of the OFP because his conduct fell within the OFP's stated exception allowing him to attend appointments at the Freeborn County Court Services Office located in the Freeborn County Government Center. Appellant points to the parties' stipulation that he had a court-services appointment and argues that he only stopped momentarily on the sidewalk near the government center on the way back from

that appointment. He also maintains that the state failed to present evidence to show how long he had been standing at that location and argues that, for part of that time, he was answering questions from the arresting officer.

"[T]he credibility of witnesses and the weight of their testimony is for the jury's consideration." *State v. Hull*, 788 N.W.2d 91, 106 (Minn. 2010). S.T. testified that appellant stood watching her conversation with the officer for about 15 minutes. The officer testified that it was about 20–25 minutes between when he first made contact with S.T. and when he arrested appellant. Based on this evidence, the jury could have reasonably inferred that appellant spent at least several minutes watching S.T. before the officer came over to investigate his presence. S.T. also testified that appellant rode his bicycle around the bank and parked it near the bank drive-through, which is inconsistent with appellant's claim that he was simply proceeding to or from his appointment. On this record, the jury could reasonably have determined that appellant's conduct did not fall within the OFP exception permitting him to be within a block of S.T.'s residence in order to attend court-services appointments.

Appellant also argues that, even if he violated the terms of the OFP, he did not do so "knowingly." The jury's determination that appellant knowingly violated the terms of the OFP was based on circumstantial evidence. *See State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007) (stating that proof of knowledge may be made by circumstantial evidence). Circumstantial evidence merits the same weight as direct evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). But this court applies a stricter degree of scrutiny in reviewing convictions that depend on circumstantial evidence and examines

the reasonableness of any inferences that could be drawn from the evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473–74 (Minn. 2010). On elements proved by circumstantial evidence, there must be "no other reasonable, rational inferences that are inconsistent with guilt." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted).

To prove an OFP violation, the state must prove the existence of and defendant's awareness of the OFP, in addition to a violation of the order. *State v. Hinton*, 702 N.W.2d 278, 283 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). Thus, the state was required to prove that appellant knew of the OFP and that his act violated the OFP. Appellant argues that he was unaware that he was violating the terms of the OFP by stopping near the US Bank after his court-services appointment. The officer testified that appellant stated that he was on his way back from the government center to "meet a friend." But the record shows that appellant stopped and dismounted from his bicycle at a location within a block of S.T.'s residence. S.T. and the officer testified that appellant stared directly at them, and the officer testified that appellant turned his body toward them as he did so. The jury was entitled to credit this testimony, which suggests no rational inference other than appellant's knowledge that he was violating the OFP.

Finally, appellant argues that the jury was impermissibly influenced by S.T.'s testimony that she found a small flag in her mailbox and that appellant had violated an earlier OFP. But S.T. testified that she did not know who placed the flag in the mailbox, and the flag was only relevant because it prompted her to call police. And the district court correctly instructed the jury to disregard S.T.'s testimony on the previous OFP violation. *See State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010) (stating that

appellate courts presume that jurors follow a judge's instructions). We conclude that on this record, there are no reasonable inferences that are inconsistent with guilt, and the evidence is sufficient to sustain appellant's conviction.

Affirmed.