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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2080**

State of Minnesota,
Respondent,

vs.

Bashir Abdullahi Farah,
Appellant.

**Filed October 9, 2012
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CR-11-981

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County
Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Charles Clippert, Special
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Bjorkman, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of two counts of stalking and fourth-degree criminal damage to property, arguing (1) there is insufficient evidence that he committed the offenses and (2) he received ineffective assistance of counsel. We affirm.

FACTS

During the early morning hours of February 6, 2011, a man pounded on M.O.'s apartment door and threatened him. Through a window next to the door, M.O. could see the man had a knife, appeared intoxicated, and wore a brown jacket. M.O. recognized the man's voice as belonging to appellant Bashir Abdullahi Farah, whom M.O. had known for several years. In response, M.O. called 911, causing the man to flee. As the man ran past the window, M.O. saw his face and confirmed he was Farah. A short time later, police officers arrested Farah, who matched the description M.O. gave to the 911 operator.

At trial, defense counsel did not stipulate to Farah's prior domestic violence-related conviction, and the state presented evidence of it to the jury. Farah was found guilty of the three charges and was sentenced to an executed prison term of 28 months. This appeal follows.

DECISION

I. The evidence is sufficient to prove Farah committed the offenses.

When reviewing a sufficiency-of-the-evidence challenge, we carefully analyze the record to determine whether the jury could reasonably find the defendant guilty of the

offenses charged based on the facts in the record and the legitimate inferences that can be drawn from them. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the state and presume the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). We defer to the jury's credibility determinations and may uphold the jury's verdict even if it is based on the testimony of one eyewitness. *Id.*

Farah's sole challenge goes to the sufficiency of the evidence identifying him as the offender. In court, M.O. identified Farah as the man who threatened him and damaged his property. M.O. testified that he recognized Farah's voice because he had known him for several years and that he saw Farah's face as he fled the scene. Additional evidence corroborates M.O.'s testimony. M.O. told the 911 operator the man is named Bashir, appeared to be intoxicated, and was wearing a brown jacket. Police officers found Farah near the scene and testified that he was very intoxicated and wore a brown jacket. Farah's post-arrest behavior was also consistent with the reported offenses: he kicked and banged the inside of the police car and threatened the arresting officer and his family.

Farah asserts that this evidence is insufficient because M.O.'s identification is unreliable and there are inconsistencies in the evidence. We disagree. First, issues of credibility are left to the jury. *Id.* Second, minor inconsistencies in the evidence do not necessarily render testimony false or constitute a basis for reversal. *See State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002) (addressing inconsistencies between state witnesses).

Because we presume the jury believed M.O.'s testimony and the corroborating evidence, we conclude that sufficient evidence supports the verdict.

II. Farah is not entitled to a new trial based on ineffective assistance of counsel.

To establish ineffective assistance of counsel, a defendant “must show that (1) counsel’s performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *State v. Caldwell*, 803 N.W.2d 373, 386 (Minn. 2011).

An attorney acts within an objective standard of reasonableness by exercising the customary skills and diligence of a reasonably competent attorney under similar circumstances. *State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009). There is a strong presumption that counsel’s representation was reasonable, *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009), and matters of trial strategy are generally not reviewed for competence, *Voorhees v. State*, 627 N.W.2d 642, 651 (Minn. 2001). Determining what evidence to present to the jury is a matter of trial strategy. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999).

Farah was charged with a felony-level stalking offense based on a prior qualified domestic violence-related conviction. *See* Minn. Stat. § 609.749, subd. 4(a) (2010). Farah contends that his trial counsel was ineffective because he did not stipulate to the prior conviction. *See State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984) (holding that when a prior conviction enhances a charge, defendants may stipulate to the conviction to

prevent it from prejudicing the jury).¹ We disagree. The decision whether to stipulate to a prior conviction concerns what evidence will be presented to the jury; and, consequently, it is a matter of trial strategy within counsel's discretion. *See Doppler*, 590 N.W.2d at 633 (concluding trial strategy includes what evidence to present to the jury); *Davidson*, 351 N.W.2d at 11 (concluding defendant may stipulate to prior offenses).²

Even if trial counsel's failure to stipulate to Farah's prior conviction fell below an objective standard of reasonableness, Farah has not demonstrated that the alleged error affected the outcome of the proceeding. There was ample evidence that Farah committed the offenses based on M.O.'s testimony and the corroborating evidence. Moreover, the reference to the conviction was brief; the prosecutor only introduced a certified copy of the conviction into evidence and then quickly addressed it in closing argument when discussing the elements of the felony stalking offense. On this record, we conclude that Farah is not entitled to a new trial based on ineffective assistance of counsel.

Affirmed.

¹ Farah also argues that counsel should have stated the reasons not to stipulate to the conviction on the record or obtained a waiver from Farah. This argument is unavailing because Farah cites no legal authority requiring such action.

² And because there is no record of counsel's reasons for not stipulating to the conviction, we have no basis to conclude the decision was unreasonable.