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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1935**

State of Minnesota,  
Respondent,

vs.

Bonnie Roselia Banicki,  
Appellant.

**Filed September 30, 2013  
Affirmed  
Kalitowski, Judge**

Winona County District Court  
File No. 85-CR-11-2089

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

Christopher M. Hood, Winona City Attorney, Michael E. Flaherty, Assistant City  
Attorney, Winona, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, F. Richard Gallo, Jr., Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Johnson, Chief Judge;  
and Kirk, Judge.

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

On appeal from conviction of misdemeanor violation of a harassment restraining order, appellant Bonnie Roselia Banicki argues the evidence was not sufficient to sustain the verdict. We affirm.

### DECISION

We apply the same standard of review when reviewing a case tried to the court as when reviewing a jury verdict. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). In considering a claim of insufficient evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

“[W]e do not try the facts anew. . . .” *State v. O’Donnell*, 280 Minn. 213, 220, 158 N.W.2d 699, 704 (1968). Rather, we must assume the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We defer to the fact-finder’s determinations of witness credibility and the weight to be given to each witness’s testimony. *State v. Bliss*, 457 N.W.2d 385, 390-91 (Minn. 1990). We will not disturb the verdict if the fact-finder “could reasonably conclude that the defendant was guilty of the charged offense, given the facts in evidence and the legitimate inferences that could be drawn therefrom.” *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007).

Appellant lives with her boyfriend on property her boyfriend owns. The property shares a north-south property line with neighbors Phillip and Charlotte Bronk. A longstanding dispute between appellant and her boyfriend and the Bronks led to the district court's issuance in July 2011 of mutual harassment restraining orders (HROs), one of which prohibited appellant from harassing or contacting the Bronks or trespassing onto their property. When a person against whom an HRO is granted knows of the order and violates it, the person is guilty of a misdemeanor. Minn. Stat. § 609.748, subd. 6(b) (2012). Appellant challenges the district court's finding that she violated the HRO.

In September 2011, the Bronks hired a fence contractor to complete the installation of a fence between their property and the property owned by appellant's boyfriend. The fence extends three feet and eight-and-one-half inches beyond the western boundary of the properties, up to a cement wall located on a third party's property. After the fence contractor dug a fence-post hole that was approximately 4 feet deep and 12 inches in diameter, appellant pushed her way through a gate to get onto the property in question and kicked the dirt back into the hole.

Appellant testified she thought the hole was on her boyfriend's property. But the fence contractor testified that when he removed the dirt from the hole he piled it on the Bronks' side of the property line because Phillip Bronk had instructed him not to go onto appellant's boyfriend's property. And an expert witness, who performed a survey to locate the fence and show it in relation to the property line, testified that the fence is located on the Bronks' side of the property line.

Appellant also testified she filled in the hole for “safety purposes.” Yet the arresting officer testified that when he arrived at the scene, appellant told him “[s]he saw the contractor out there digging a hole, pushed her way through the gate, and then kicked the dirt into the hole to fill it up” because “she didn’t want the fence on the property.”

Appellant contends that when she kicked the dirt into the hole she was on the third party’s property and, therefore, there is insufficient evidence to sustain the verdict because she did not trespass onto the Bronks’ property. But whether appellant was on the Bronks’ property when she filled in the hole was not determinative of the district court’s conclusion that appellant violated the HRO. The district court explicitly did not make a determination regarding trespass, but found that appellant harassed the Bronks by interfering with and intentionally frustrating the Bronks’ efforts to install a fence.

The district court credited the fence contractor’s and surveyor’s testimony that the hole and dirt were not on appellant’s boyfriend’s side of the fence line and specifically discredited appellant’s testimony. We defer to the district court’s credibility determinations. *Bliss*, 457 N.W.2d at 390-91. Therefore, we conclude that the district court’s findings that appellant interfered with the Bronks and acted “with the intent to frustrate the putting in of a fence” are supported by sufficient evidence in the record.

Viewing the evidence in the light most favorable to the verdict, we conclude that the evidence is sufficient to sustain appellant’s conviction of misdemeanor violation of an HRO based on the district court’s finding of harassment.

**Affirmed.**