STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0164

State of Minnesota,
Respondent,

vs.

Justin Daniel Okins,
Appellant.

Filed January 21, 2025
Affirmed
Ross, Judge

Redwood County District Court
File No. 64-CR-23-8

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

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa A. Haley, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Justin Okins made Facebook posts directed at his former romantic partner after being served with a domestic-abuse no-contact order prohibiting him from directly or

indirectly contacting her electronically. Appealing from his consequent felony conviction of violating that order, Okins argues that the trial evidence was insufficient to support the element of the crime that implicitly required the state to prove that he knew all the facts that made his conduct a violation of the order. He alternatively argues that the prosecutor committed reversible misconduct during trial. Because the state presented sufficient evidence that Okins knew of the conduct that the order expressly prohibited, and because the prosecutor's allegedly improper argument and statements were either harmless or not error, we affirm.

FACTS

A deputy sheriff personally served Justin Okins in December 2022 with a domestic-abuse no-contact order (DANCO). The DANCO named Okins's former romantic partner as the protected person, whom, in the interests of her privacy, we will refer to as Kelly. The DANCO prohibited Okins from contacting Kelly "directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means." The DANCO also prohibited Okins from "harassing, stalking, or threatening" Kelly.

Three days after the officer served him with the DANCO, Okins posted the following statement on his Facebook page:

> You protected a[n] offender scared for him and put away your baby dad for a worthless married man. Attacked me and kids for him. Stole house and bill money and spent it on dope after your meds ran out in a couple days. Just remember your kids see and hear everything and you can't hide it. I could've taken kids numerous times still could turn you in to cps but I ain't a snitch like you and kept everything from us losing it just so you could take it. Petty dope hoe once you get popped I'll do the same to you and you will never see them.

> How could you go from a perfect loving mother fianc[é]e to what you've become kick that shit and get help you deserve better and so do the kids. We have put them through enough stop the petty shit and save on lawyer fees so everyone can move on[.]

Okins also posted an image overlaid with the text, "The worst feeling is when you don't wanna give up on someone but you know you have to[.]"

Kelly did not immediately see Okins's Facebook posts, as Okins and Kelly were not Facebook "friends" at the time. But a mutual friend saw and took screenshots of the posts, and she sent the screenshots to Kelly. Kelly believed that Okins directed the posts at her, and she reported them to the police. The state charged Okins with committing a felony DANCO violation.

During open voir dire for jury selection at Okins's DANCO-violation trial, the prosecutor asked one prospective juror, "Do you think sitting up there, telling 12 strangers what happened to you, very intimate um, incident that happened to you, do you think that would be difficult?" Okins's attorney objected to the question on the ground that it put the jurors in the victim's shoes. The district court sustained the objection.

Five witnesses testified at the trial. They were Okins, Kelly, Kelly's friend, and two law-enforcement officers. The district court instructed the jury that the state had to prove five elements to establish Okins's guilt: (1) a DANCO existed; (2) Okins knew the DANCO existed; (3) Okins violated a DANCO term or condition; (4) Okins "knew all of the facts that made his conduct a violation of [the DANCO;]" and (5) Okins's conduct occurred on the specified date and he made a communication to Kelly or his conduct

resulted in Kelly's receiving his communication while either Okins or Kelly resided in Redwood County. Neither party objected to the district court's instruction detailing the elements.

The prosecutor asserted during her closing argument that Kelly had lived in "constant fear" of Okins, declared that this was "the everyday life of [Kelly]," and urged the jury to "imagine having lived through the last few years in this very . . . tremulous relationship." Okins's counsel immediately objected, and the district court sustained the objection. Prompting another sustained objection, the prosecutor continued, "[A]nd then receiving these messages from one of your good friends that is accusing you of infidelity, accusing you of --." Outside the jury's hearing, the district court explained, "[Y]ou can't ask the jury to put themselves in the shoes of the victim."

The jury found Okins guilty as charged. Okins appeals from the consequent conviction.

DECISION

Okins raises two arguments on appeal. He argues first that the jury received insufficient evidence to prove the *mens rea* element of a DANCO violation and that we must therefore reverse his conviction. He argues alternatively that he is entitled to a new trial because the prosecutor committed reversible misconduct. Neither argument prevails.

I

We first address Okins's contention that the state failed to present sufficient evidence to support his DANCO conviction. We evaluate a sufficiency-of-the-evidence assertion by carefully examining 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. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We consider the evidence in the light most favorable to the verdict and assume the jury disbelieved any conflicting evidence. *Id.* We will apply this standard after addressing the meaning of the contested *mens rea* element.

Before we consider whether the evidence supports the DANCO conviction, we first consider the state's legal contention about what the *mens rea* element entails. It is true, as the state maintains, that the DANCO statute as currently written, Minnesota Statutes section 629.75 (2022), does not expressly require proof that the alleged violator knowingly violated the order. A prior version of the statute required the state to prove that a defendant "knowingly violate[d]" a DANCO, Minn. Stat. § 629.75 (2012), and the supreme court interpreted this language to require the state to prove that the defendant "perceive[d] directly that the contact violated the DANCO statute," *State v. Watkins*, 840 N.W.2d 21, 29 (Minn. 2013). The legislature later amended that statute to remove the adverb, "knowingly," from the operative term, "violates." 2013 Minn. Laws ch. 47, § 5, at 207. The state is therefore mostly correct.

The only apparent knowledge requirement in the statute as presently written is limited to the defendant's knowledge that a DANCO exists:

> [A] person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor. . . . A person is guilty of a felony . . . if the person violates this subdivision . . . within ten years of the first of two or more previous qualified domestic violence-related offense convictions . . . .

Minn. Stat. § 629.75, subd. 2 (2022). But recent caselaw has incorporated a common-law *mens rea* concept into a similar statute prohibiting violations of harassment restraining orders (HROs), and we will for consistency interpret the DANCO statute in the same manner.

In *State v. Andersen*, we considered whether, to convict the defendant of violating an HRO, the state needed to prove that the defendant knew all the facts that would cause him to be in violation of it. 946 N.W.2d 627 (Minn. App. 2020). The defendant had been convicted of violating an HRO that prohibited him from being within a specified distance of the protected person's home but did not include the home's address. *Id.* at 629–30. We reversed the conviction because "the state was required to prove," but failed to prove, "that Andersen knew that his presence in a particular location would subject him to criminal liability." *Id.* at 637–38. Like the DANCO statute at issue here, the HRO statute had, until 2013, required the state to prove that a defendant "knowingly violate[d]" an HRO to convict him of a gross misdemeanor or felony. Minn. Stat. § 609.748, subd. 6(c)–(d) (2012); 2013 Minn. Laws ch. 47, § 4, at 206. And we had previously interpreted the earlier version of the HRO statute to mean that a jury must find, for a felony-level conviction, that a defendant was "aware" that his alleged conduct was prohibited by the HRO. *State v. Gunderson*, 812 N.W.2d 156, 160–61 (Minn. App. 2012). Relevant here, while thoroughly discussing and applying the presumption in favor of a *mens rea* element in interpreting criminal statutes, the *Andersen* court determined that the legislature's deletion of the "knowingly" adverb in the HRO statute did not overcome the presumption. 946 N.W.2d at 633–34. We incorporate that reasoning without restating it here, and we reach the same

basic conclusion that the state had to prove that Okins knew of the conduct that would violate the DANCO.

This court recently addressed the similar *mens rea* elements required to prove an OFP violation in a nonprecedential decision, applying reasoning that comports with our conclusion today. In *State v. Deal*, we reiterated *Andersen*'s holding that "the state must prove that the defendant knew all the facts that would cause him or her to be in violation of [an HRO]." No. A24-0195, 2024 WL 5244774, at *3 (Minn. App. Dec. 30, 2024) (quoting *Andersen*, 946 N.W.2d at 628). Although the *Deal* court frames the elements in a slightly different fashion than we have today, we similarly observed that the state had provided sufficient evidence to prove that Deal knew the OFP existed and that, like our conclusions here and in *Andersen*, "he was aware that his conduct violated its terms." *Id.* at *4.

The district court's instructions substantively included this element. In addition to instructing the jury that the state had to prove that Okins knew that the DANCO existed, the district court's instructions also required the state to prove the *mens rea* element that Okins "knew all of the facts that made his conduct a violation of that order." The prosecutor elaborated without objection by explaining to the jury that this element required proof "that the Defendant knew full well what actions were prohibited in this Domestic Abuse No Contact Order." She added that these prohibited actions were "clearly set out in the [DANCO]" and maintained that "[t]he State has proven beyond a reasonable doubt that the Defendant knew what acts constituted a violation of the [DANCO]." Okins's counsel argued for a different outcome but acknowledged that the element required proof that "the

Defendant knew all the facts that made his conduct a violation of the order." She added, "We argue, no, he didn't," and she elaborated further:

> [T]he State says that Mr. Okins knew full well that these posts would make their way to [Kelly]. I guess that depends . . . if he did not know that those posts were going to be in a public forum, probably did not know that. If Mr. Okins took steps to try to delete the posts, he may have been trying to prevent that consequence.

The wording of the instruction is arguably awkward. But in substance and as argued by both trial counsel, it properly required the state to prove that Okins knew of and yet engaged in conduct that the DANCO expressly prohibited.

Our review of the record informs us that the state provided sufficient direct evidence to prove both that Okins knew a DANCO existed and that he knew of and yet engaged in conduct that the DANCO expressly prohibited. "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and alteration omitted). Okins testified that he was served with the DANCO on December 23, 2022, and the police officer who served him testified that he explained the terms of the DANCO to Okins. Okins himself testified that he understood that the terms of the DANCO prohibited him from having either direct or indirect contact with Kelly and from harassing, stalking, or threatening her. The evidence also established that Okins posted the contested communication, and the jury's verdict demonstrates that it accepted the prosecutor's following argument about his knowledge, which we believe was supported by adequate trial testimony and other evidence:

> [A]nd he[] posted Facebook posts knowing full well that those would make their way to [Kelly]. Electronic, Facebook is electronic. The Defendant admitted that he made these on his phone. The phone was the only thing that he had while he was homeless on this date. The postings were in writing. . . . [H]e wrote these words, he was journaling, he wrote these words. [T]hrough others, again, by posting these on Facebook, where he knew he had many friends in common, including one of her best friends since childhood, Ms. [K]. He knew full well that one of those people would screenshot that, would let [Kelly] know that the Defendant had been making these comments, directed toward her.

Because direct evidence at trial tended to prove that Okins knew the DANCO existed and also knew that indirectly contacting Kelly by electronic means would violate the DANCO, the trial evidence was sufficient to establish that he violated the statute's *mens rea* elements.

II

We turn to Okins's argument that the prosecutor engaged in misconduct at trial warranting reversal. We agree that the prosecutor engaged in some improper argument, but we conclude that the impropriety was harmless and therefore does not warrant a new trial. Okins objected during trial to some, but not all, of the alleged misconduct.

Objected-to Alleged Misconduct

Okins identifies two primary incidents that he alleges constitute objected-to misconduct. We review objected-to prosecutorial misconduct for harmless error, and we will not reverse a conviction and grant a new trial if the misconduct was harmless beyond a reasonable doubt. *State v. Hunt*, 615 N.W.2d 294, 301–02 (Minn. 2000). Historically, whether prosecutorial misconduct was harmless depended on the seriousness of the

misconduct such that, if it was unusually serious, we would reverse unless we were certain beyond a reasonable doubt that the misconduct was harmless and that, if the misconduct was less serious, we would consider only "whether the misconduct likely played a substantial part in influencing the jury to convict." *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974). Although the supreme court has called into question the continued viability of this two-tiered approach, *see State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012), we affirm here because, even assuming the prosecutor here committed "serious" misconduct, the misconduct was harmless beyond a reasonable doubt.

Okins first points to the prosecutor's questions during voir dire related to the prosecutor's inquiry about whether the potential juror would find it difficult to testify if it were an "incident [of domestic violence] that happened to you." And he points to the similar closing argument recounted above. The district court correctly sustained Okins's objections to the voir dire questions and to the closing-argument statements because they improperly constituted statements by a prosecutor "that invite the jurors to put themselves in the shoes of the victim." *State v. Johnson*, 324 N.W.2d 199, 202 (Minn. 1982). But we hold that the misconduct was harmless beyond a reasonable doubt. It was brief, not especially inflammatory, not emphasized by the prosecutor, and not repeated after the district court sustained the objections. After careful review of the misconduct in context, we have no reasonable doubt that the improper statements were inconsequential.

Unobjected-to Alleged Misconduct

Okins also points to instances of what he says were unobjected-to prosecutorial misconduct. He breaks these instances into two categories. The first category includes

prosecutor conduct that supposedly misled the jury into speculating that posting on Facebook is always public. In closing the prosecutor made these allegedly improper statements: that "[p]osting on your [Facebook] account is not private"; that Okins's testimony that he was writing journal entries on Facebook "is not how Facebook works. . . . [Okins] knows that and you know that"; that Okins "posted Facebook posts knowing full well that those would make their way to [Kelly]" in violation of the DANCO; and that Okins posted on Facebook "thinking that he could get out of a violation." Okins's contention about these statements does not lead us to reverse.

Okins argues unpersuasively that these unobjected-to statements were erroneous because they were not supported by evidence in the record. We review unobjected-to prosecutorial misconduct under a plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Okins first bears the burden to establish that an error occurred and that it was plain. *Id.* If he meets that burden, the burden shifts to the state to establish that the error did not affect his substantial rights. *Id.* Even if the state failed to meet that burden, we would then assess whether the error requires reversal to "ensure fairness and the integrity of the judicial proceedings." *Id.* For the following reasons, we conclude that Okins fails to establish error.

Okins accurately highlights that, during the trial, the state provided little to no evidence about the mechanics of Facebook's privacy settings. But during closing argument a prosecutor may appeal to jurors' common sense, *State v. Bauer*, 776 N.W.2d 462, 475 (Minn. App. 2009), *aff'd on other grounds*, 792 N.W.2d 825 (Minn. 2011), if the prosecutor does not improperly "urge the jurors to look at their own experiences as proof

that the defendant's defense is not credible," *State v. Williams*, 525 N.W.2d 538, 549 (Minn. 1994). The prosecutor here merely asked the jurors to draw on their own common sense about the privacy of social media posts. And in context, the prosecutor was directing the jurors to consider the specific evidence tending to show that Okins knew that Kelly would not directly receive the posts but that an acquaintance would relay them to her. The prosecutor's statements do not constitute error.

Okins also points to a second category of claimed error—the prosecutor's allegedly giving her personal opinion about witness credibility while disparaging Okins's defense. The prosecutor argued in closing that Okins's testimony was a "fanciful" and "creative" story; that he was not credible; and that he "threw [Kelly] under the bus" and was "unable to take accountability for any of his actions." And the prosecutor suggested that Okins was attempting to cast himself as the victim.

The prosecutor's comments were neither improper credibility attacks nor improperly disparaging arguments. Although a prosecutor may not express her personal opinion on the credibility of a witness, *State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003), she may analyze the evidence and argue that "particular witnesses were or were not credible," *State v. Wright*, 719 N.W.2d 910, 918–19 (Minn. 2006). The prosecutor's comments about Okins's lack of accountability and his self-victimization were her characterizations of his defense, and she did not offer her personal opinion about Okins's credibility. And her statements did not improperly disparage Okins's defense. A prosecutor "may not belittle either the defendant or a particular defense in the abstract," but she may argue that a specific defense is meritless. *State v. Matthews*, 779 N.W.2d 543, 552 (Minn.

2010). And a prosecutor's closing argument need not be "colorless." *State v. Porter*, 526 N.W.2d 359, 363–64 (Minn. 1995). For example, the supreme court has concluded that a prosecutor did not commit misconduct when he characterized a defendant's description of events as "concocted," "ridiculous," and "unbelievable." *Matthews*, 779 N.W.2d at 552. The prosecutor's comparatively mild characterization of specific aspects of Okins's defense as "creative" and "fanciful" was, in context, not improper argument. Okins has therefore failed his burden of establishing an error in these unobjected-to prosecutorial statements.

Affirmed.