STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1484

State of Minnesota,
Respondent,

vs.

Nicholas John Wolter,
Appellant.

Filed July 22, 2024
Affirmed
Ede, Judge

Olmsted County District Court
File No. 55-CR-22-6992

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Daniel A. McIntosh, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from a final judgment of conviction, appellant argues that the trial evidence is insufficient to sustain the district court's determination that he is guilty of violating an order for protection. We affirm.

FACTS

Respondent State of Minnesota charged appellant Nicholas John Wolter with violating an order for protection (OFP) within ten years of the first of two or more previous qualified domestic-violence-related convictions, in violation of Minnesota Statutes section 518B.01, subdivision 14(d)(1) (2022). Wolter waived his right to trial by jury and the case proceeded to a court trial in June 2023. The state called E.W.—the party protected by the OFP—and Rochester police officers as witnesses. Wolter did not testify. The following factual summary is based on the trial evidence.

Before divorcing in 2019, Wolter and E.W. (the parties) were married for 17 years and had three children together. In January 2020, a district court filed an OFP against Wolter and in favor of E.W. The initial OFP was effective for two years and forbade contact between the parties, "whether in person, with or through other persons, by telephone, mail, e-mail, through electronic devices, social media, or by any other means," except as to their three children. The OFP provided that contact between the parties could occur only through an application called Our Family Wizard (OFW).[1] OFW generates "read receipts[,]" which show whether a person has reviewed a message sent through the application.

In December 2020, the OFP was modified to require (1) that Wolter's contact with E.W. occur through OFW "regarding medical emergencies only" on behalf of the parties'

[1] OFW is "a court-ordered communication website[.]" *Winkowski v. Winkowski*, 989 N.W.2d 302, 306 (Minn. 2023).

youngest child (the child),[2] (2) that Wolter not have "any indirect contact with [E.W.] through any form of social media[,]" (3) that the parties' parenting time exchanges take place at a police department, and (4) that Wolter could not "stop at, in front of, or come onto" E.W.'s property, he could not park within "two 500-foot blocks" of her home, and if he ever saw E.W. outside her residence when he was driving by, Wolter could not make "any comments or gestures towards her." In March 2022, the district court ordered a five-year extension of the OFP.

In October 2022, E.W. traveled to a gymnastics facility in Rochester to pick up the child. Although the parties had agreed that Wolter would retrieve the child from gymnastics practice that day, the child contacted E.W. via text message and told E.W. that she did not want to go with Wolter. At first, E.W. insisted that the child leave gymnastics with Wolter as planned, but E.W. eventually relented. E.W. sent a message to Wolter via OFW, notifying him of the child's refusal to honor their parenting time schedule and that E.W. would be picking up the child. Although OFW's "read receipt" function indicated that Wolter reviewed the message at the time that E.W. sent it, Wolter did not reply.

When she arrived, E.W. parked away from where Wolter was waiting in his vehicle. The child exited the gymnastics facility, entered E.W.'s vehicle, and told E.W. that Wolter's vehicle was now behind them. E.W. likewise observed that Wolter's vehicle had moved behind her, blocking her into the space where she had parked. As he stopped his

[2] The amended OFP did not govern Wolter's contact with the parties' two other children, who were ages 16 and 20 at the time of the trial, because they no longer had parenting time with Wolter.

vehicle behind E.W., Wolter rolled down his windows and used his phone to videorecord her before he drove away. E.W. later reported the incident to the police.

At trial, Wolter stipulated to the existence of an OFP against him at the time of the incident, to his knowledge of the OFP, and to his prior domestic-violence-related convictions. The district court received several exhibits into evidence, including: documentation of Wolter's past convictions for violating a domestic-abuse no-contact order and the related police reports; the January 2020 OFP; the December 2020 order amending the OFP; the March 2022 order extending the OFP for five years; and the 47-second video that Wolter had recorded while he was driving his vehicle through the parking lot and during the incident.

The district court filed findings of fact, conclusions of law, and an order adjudicating Wolter guilty of violating the OFP. The district court found that Wolter drove his vehicle through the gymnastics facility parking lot and stopped behind E.W., blocking her from backing up. The district court noted that Wolter "remained there for less than 10 (ten) seconds" and "made no other contact with [E.W.] except for making a video recording of the incident." But the district court credited E.W.'s testimony "about the fact that [Wolter] blocked her path[,]" which "resulted in her moving her gear shift from reverse to park." And the district court determined that Wolter "brought himself into [the] immediate proximity of [E.W.] and created an unnecessary interaction."

Based on its findings, the district court determined that Wolter violated the provisions of the OFP because he "intentionally obstructed [E.W.'s] path of travel and was in close proximity to [her]." The district court acknowledged that the OFP did not

"specifically forbid making a video" but found that such "action would amount to an indirect contact with [E.W.]." At sentencing, the district court placed Wolter on supervised probation for five years and ordered that he serve 30 days in jail.

Wolter appeals.

DECISION

Wolter contends that the record is insufficient to support his OFP-violation conviction because the district court's findings that he intentionally obstructed E.W.'s path and was in close proximity to E.W. are not reasonably supported by the trial evidence. The state responds that sufficient evidence supports the district court's determination that Wolter engaged in prohibited contact "by stopping his vehicle behind [E.W.] and obstructing her path of travel." We agree with the state.

Standard of Review and Applicable Law

Appellate courts "use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). "When a sufficiency-of-the-evidence claim turns on the meaning of the statute under which a defendant has been convicted, [appellate courts] are presented with a question of statutory interpretation that [they] review de novo." *State v. Bradley*, 4 N.W.3d 105, 109 (Minn. 2024) (quotation omitted). "After deciding the meaning of the statute, [appellate courts] apply that meaning to the facts to determine whether there is sufficient evidence to sustain the conviction." *Id.*

"When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from

them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts "defer to the fact-finder's credibility determinations and assume that the fact-finder disbelieved any evidence that conflicted with the verdict." *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016) (quotation omitted).

"The relevant standard of review [also] depends on whether the factfinder . . . reached its conclusion of law based on direct or circumstantial evidence." *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct 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 omitted). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). "Circumstantial evidence is entitled to the same weight as direct evidence; however, if a conviction is based on circumstantial evidence, a higher level of scrutiny is warranted." *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004).

"When the direct evidence of guilt . . . is not alone sufficient to sustain the verdict, . . . [appellate courts] apply a heightened two-step standard, which . . . [is] called the circumstantial-evidence standard of review." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). "In the first step, [appellate courts] identify the circumstances proved by the State." *Id.* And appellate courts defer "to the [fact-finder's] acceptance of the State's evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved

by the State." *Id.* At the second step, appellate courts must "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Id.* (quotation omitted). Appellate courts "do not defer to the [fact-finder] at this stage, but rather . . . independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). "If a reasonable inference other than guilt exists, then [appellate courts] will reverse the conviction." *Id.*

To convict a defendant of a felony OFP violation, the state must prove the following four elements beyond a reasonable doubt: (1) that there was an existing OFP; (2) that the defendant knew of the OFP; (3) that the defendant violated a term or condition of the OFP; and (4) that the defendant violated the OFP within ten years of the first of two or more previous qualified domestic-violence-related convictions. Minn. Stat. § 518B.01, subd. 14(b) (2022), (d)(1); *cf. State v. Hinton*, 702 N.W.2d 278, 283 (Minn. App. 2005) (setting forth analogous elements in considering a sufficiency-of-the-evidence challenge to a conviction under an earlier version of the statute), *rev. denied* (Minn. Oct. 26, 2005).

As relevant to the determination of whether a defendant has violated an OFP for purposes of the fourth element, the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2022), provides that, after a party has petitioned for relief and upon notice and a hearing, a district court may order a respondent party "to have no contact with the petitioner whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means[.]" Minn. Stat. § 518B.01, subd. 6(10). "Contact" is defined as "'[a] coming together or touching, as of objects or surfaces,' '[t]he state or condition of touching

or of immediate proximity,' or '[c]onnection or interaction; communication.'" *State v. Phipps*, 820 N.W.2d 282, 286 (Minn. App. 2012) (alteration in original) (quoting *The American Heritage College Dictionary* 299 (3d ed. 2000)).

Sufficient Evidence Supports Wolter's Conviction.

Here, Wolter stipulated to the first, second, and fourth elements of the offense, i.e., that there was an existing OFP against him on the relevant date, that he knew of the OFP, and that he had two or more previous qualified domestic-violence-related convictions at the time of the incident. Thus, the only dispute on appeal is whether the evidence was sufficient to sustain a finding that Wolter violated a term or condition of the OFP. Assuming without deciding that the video exhibit and E.W.'s testimony—which provided direct evidence of the charged events—were not alone sufficient to sustain the verdict, we nonetheless conclude that the evidence was sufficient under the circumstantial-evidence standard of review. *See Loving*, 891 N.W.2d at 643.

At the first step of that standard, we identify the following circumstances proved, deferring to the district court's acceptance of the state's evidence and its rejection of contrary evidence, per *Loving*, 891 N.W.2d at 643:

- The initial OFP prohibited Wolter from having any contact with E.W., except through OFW as to their three children.

- The amended provisions of the OFP further limited Wolter's contact with E.W. to communications through OFW "regarding medical emergencies only" on behalf of the child, significantly limited Wolter's use of social media to indirectly contact E.W., and restricted Wolter's activities while traveling near E.W.'s home. The aforementioned provisions of the initial OFP remained in full force and effect after the amendment.

- In October 2022, Wolter was scheduled to pick up the child from gymnastics, but E.W. sent him an OFW message stating that she would be picking up the child from the facility because the child was refusing to go with him.

- OFW showed that Wolter read the message when E.W. sent it, but he did not respond.

- After E.W. arrived at the gymnastics facility and parked, the child got into her vehicle and told E.W. that Wolter's vehicle was behind them.

- Wolter had driven his vehicle behind E.W., come to a complete stop for several seconds, rolled down his windows, and videorecorded E.W. before driving away.

- The position of Wolter's vehicle behind E.W. blocked her path of travel, causing her to shift from reverse to park.

At the second step, without deference to the district court's factual findings, we "independently examine the reasonableness of all inferences that might be drawn" from the foregoing to "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Id.* Having conducted that independent examination, we conclude that the only reasonable inference that may be drawn from these circumstances is that Wolter violated the provisions of the OFP by stopping his vehicle behind E.W. and limiting her ability to move freely away from where she had parked. Albeit brief, this interaction meets the definition of "contact." *Phipps*, 820 N.W.2d at 286.

Citing *State v. Andersen*, 946 N.W.2d 627 (Minn. App. 2020), Wolter claims that the state had to prove an additional element, i.e., that he knew all the facts that made his conduct a violation of the OFP. Wolter asserts that he did not intentionally obstruct E.W. because he could not have known her desired exit route from the parking lot until E.W.

"indicated a path of travel, by putting her vehicle in reverse." Although he concedes that E.W.'s "reverse lights not only signaled [E.W.'s] desired path of travel, but also signaled that [E.W.] was leaving with [the child,]" Wolter nonetheless maintains that "no reverse lights were visible when [Wolter] first drove his vehicle [toward E.W.'s location] but were visible a short time later." We are not convinced by these arguments.

Unlike the present matter, *Andersen* concerned a sufficiency-of-the-evidence challenge to a conviction under Minnesota Statutes section 609.748, subdivision 6(b) (2016), i.e., a misdemeanor harassment-restraining-order (HRO) violation. 946 N.W.2d at 630. Under the circumstances of this case, it is doubtful that *Andersen* requires anything more than proof that Wolter knew the OFP existed—an undisputed fact to which Wolter stipulated at trial. *See Brouillette v. State*, No. A23-0948, 2024 WL 912507, at *4 (Minn. App. Mar. 4, 2024) (nonprecedential opinion distinguishing *Andersen* in reviewing a domestic-abuse no-contact order (DANCO) conviction and concluding that "*Andersen* supports the state's argument that, as to the charged crime's mens rea element, it only had to prove that [the appellant] knew the DANCO existed"), *rev. denied* (Minn. May 14, 2024).[3]

But even assuming without deciding that *Andersen* applies in the manner Wolter suggests, we conclude that the inferences Wolter urges are not reasonable based on the circumstances proved. Instead, the record—including the video Wolter recorded—reflects

[3] "Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

that E.W.'s reverse lights were illuminated while Wolter's vehicle was completely stopped behind her and that those lights turned off after a few seconds. The only rational inference from this evidence is that E.W. planned to back out of the space once the child was secure inside her vehicle, but she could not do so because Wolter had stopped his vehicle behind her. By his own concession, Wolter knew all the facts that made his conduct a violation of the OFP because E.W.'s reverse lights both signaled her desired path of travel and indicated that she was leaving with the child. Rather than proceed past E.W. out of the parking lot, Wolter stopped and impeded E.W. Indeed, the district court credited E.W.'s testimony that Wolter's conduct caused her to move her gear shift from reverse to park, and we defer to the district court's credibility determinations as to the circumstances proved. *See Barshaw*, 879 N.W.2d at 366.

Wolter also cites *State v. Mosdal*, No. A19-0805, 2020 WL 2517542, at *3 (Minn. App. May 18, 2020), in support of his position that he "was never near enough to [E.W.] to make any physical contact with her." In *Mosdal*, we applied the definition of contact set forth in *Phipps* and concluded that a defendant's act of driving behind a protected party did not "equate to contact when they were in separate vehicles and [the protected party] did not even know" that the defendant was driving behind her. 2020 WL 2517542, at *3.

Mosdal is both nonprecedential and distinguishable. In that case, after the defendant and the protected party attended a court hearing, the defendant left and believed that he was driving behind the protected party's vehicle. *Id.* at *1. The defendant took it upon himself to "call[] 911, inform[] dispatch of the OFP, and state[] that he wanted to make a record that he was not following [the protected party] and was keeping a quarter- to a half-

mile distance behind her." *Id.* The protected party in *Mosdal* did not even see the defendant driving behind her. *Id.* at *3. Rather, the matter only came to the attention of law enforcement because the defendant himself reported the incident to 911. *Id.* at *1. By contrast, E.W. observed Wolter stop his vehicle and saw Wolter recording her with his phone. It was E.W. who reported the incident to the police, not Wolter. And the video evidence demonstrates that Wolter was far closer than a quarter mile from where E.W. was located when he stopped his vehicle to record her. Thus, we are not persuaded by Wolter's reliance on *Mosdal*.

Lastly, Wolter challenges the district court's finding that he engaged in "indirect contact" with E.W. when he used his phone to make the video recording. Pointing to *State v. Christensen*, No. A14-0067, 2014 WL 6609058, at *5 (Minn. App. Nov. 24, 2014), another nonprecedential case, Wolter argues that "this court has previously held that the act of filming or recording the home of other parties protected under a harassment restraining order was not 'indirect contact.'"

Christensen is similarly distinguishable. There, we concluded that a guilty plea was invalid because "the facts to which [the defendant] admitted at the plea hearing [did] not support the conclusion that [the defendant had] engaged in indirect contact by being in close proximity" to parties protected by an HRO. *Christensen*, 2014 WL 6609058, at *5. The defendant and the protected parties were neighbors and the HRO prohibited the defendant from engaging in direct or indirect contact with the protected parties. *Id.* at *4. The defendant admitted at the plea hearing that she had placed a video camera on her front steps and recorded the protected parties' house, front yard, and vehicle. *Id.* at *1. The

protected parties observed the defendant with the video camera. *Id.* But because the defendant "remained on her own property at all times and neither saw nor video-recorded" any of the protected parties, we concluded that "the record of the plea hearing [did] not contain a factual basis to support the conclusion that [the defendant] engaged in direct contact or indirect contact" with the protected parties. *Id.* at *4-5.

That said, we also concluded in *Christensen* that "[t]he ordinary meaning of the word 'indirect' is '[d]iverging from a direct course; roundabout' or '[n]ot proceeding straight to the point or object'" and that, by prohibiting the defendant from engaging in indirect contact, the HRO forbade the defendant "from causing a third person to make contact with the family." *Id.* at *4 (alteration in original) (quoting *The American Heritage Dictionary of the English Language* 894 (5th ed. 2011)). Because the plea hearing record did not reflect that the defendant caused a third person to engage in contact with the protected parties, the factual basis in *Christensen* was insufficient to establish that the defendant had engaged in unlawful indirect contact. *Id.*

To the extent that *Christensen* interprets "indirect contact" to require a showing that the defendant had caused a third person to engage with the protected parties, we are persuaded that there is no factual basis in this case to support the district court's finding that Wolter's conduct was "indirect contact" with E.W. This is because there is no evidence that Wolter caused a third person to contact E.W. We therefore conclude that the district court's finding that Wolter's action of recording a video of E.W. constituted "indirect contact" was not supported by the evidence. Nevertheless, the Minnesota Supreme Court has analogously held that an erroneous finding does not compel reversal "when

independent findings of fact, decisive of the case, are supported by the record." *State v. Lopez*, 988 N.W.2d 107, 116 (Minn. 2023) (citing *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) (explaining that, "[w]here a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained")) (other citations omitted).

Here, the district court's decisive finding is that Wolter placed himself in E.W.'s "immediate proximity" and caused "an unnecessary interaction." The record supports this determination. Unlike the defendant in *Christensen*, 2014 WL 6609058, at *4, Wolter was in E.W.'s immediate proximity and unnecessarily interacted with her by bringing his vehicle to a complete stop directly behind her and recording a video.

We acknowledge that it was reasonable for Wolter to wait in the parking lot to ensure that the child left the gymnastics facility with E.W. And we note the brevity of the interaction underlying Wolter's conviction. But because Wolter came to a complete stop behind E.W.—long enough to roll down his window, record the video, and prevent E.W. from leaving—we conclude that the circumstances proved are inconsistent with any rational hypothesis other than that Wolter violated the OFP by placing himself in E.W.'s immediate proximity and obstructing her path of travel. Thus, the evidence is sufficient to sustain Wolter's conviction for violating the OFP.

Affirmed.