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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0420**

State of Minnesota,
Respondent,

vs.

Roy Paul Sanborn,
Appellant.

**Filed May 20, 2019
Affirmed
Halbrooks, Judge**

Waseca County District Court
File No. 81-CR-16-242

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

Rachel V. Cornelius, Waseca County Attorney, Waseca, Minnesota (for respondent)

Brandon V. Lawhead, Lawhead Law Offices, Austin, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Halbrooks, Judge;
and Larkin, Judge.

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

HALBROOKS, Judge

Appellant challenges his conviction of violation of a harassment restraining order (HRO) under Minn. Stat. § 609.748, subd. 6(a)-(b) (2014), on the ground that the evidence is insufficient. We affirm.

FACTS

Appellant Roy Paul Sanborn and L.S. have one minor child together. In 2015, L.S. was granted an HRO against Sanborn that prohibited him from direct or indirect contact with her. Later that year, Sanborn and L.S. entered into a stipulation to modify the HRO that stated that Sanborn

may use a third party, or e-mail, for the sole purposes of communicating with [L.S.] about parenting time, the child's illnesses, the child's medical care or appointments, or the child's prescribed medication/administration of medication. In case of immediate emergency involving the health, safety or well-being of the child, [Sanborn] may contact [L.S.] via text message. Respondent may attend public or community activities or functions that relate to the child, but he shall not have direct contact or communication with [L.S.] during those activities or functions, and will make every attempt to remain a reasonable distance away from [L.S.], while he is attending those activities or functions.

Between mid-November 2015 and mid-January 2016, Sanborn sent seven emails¹ to L.S., typically in response to communication from her about parenting time. But Sanborn included other statements in the emails that L.S. perceived as harassing. For example, in response to an email from L.S. confirming a drop-off time for their child and letting Sanborn know about a behavior award the child won, Sanborn replied:

That's Great [child] got another great behavior award. She Realy is a tender hearted child. Still don't understand why someone would cause such drama in [child]'s life. Just because somebody didn't want to be committed to a stable loving family. Rather just be free and do whatever they pleased at any given moment. To pursue there own version of happiness and affairs. Oh well they say all people's morals are going down the tubes. But at least for the time being we know

¹ The emails have been reproduced as written by Sanborn throughout this opinion.

our daughter [child]'s morals isn't. Lets work on keeping it that way.

In mid-December, L.S. emailed Sanborn to inform him of a drop-off time for the child and asked if she needed to bring the child's dress shoes. Sanborn replied:

yes i got [child]'s teachers email , yes i got dress shoes also for [child]. Thanks.

Who is this Jerry friend that [child] is saying she is scared of that keeps coming down to see her mom ? I'm highly concerned for [child]'s safty . im going to have a father – daughter talk with [child]. in the meen time

I told [child] that if he scares her or makes her feel uncomfortable to let me or her teacher or [grandmothers] know.

or she can also tell the police.

Thanks for attention to this matter.

Later that week Sanborn wrote, “[Child] told me that her mom has been letting boyfriend Jerry drive [child]'s dad's Pontiac [with child] in the car ? That's not safe.”

On December 22, L.S. emailed Sanborn in regard to parenting time over the Christmas and New Year's holidays. Sanborn responded in relevant part:

For New years. The agreement I'm understanding is I have [child] for new years eve. And her biological mom may have [child] on New years day. So that is the plan . This should work out nice So [child's] biological mom can spend time on New years eve with her other new friend for this current year Jerry.

I can arrange to have [child] for New years day if you would like to rest , SLEEP in or DO some Activities with Any Friend / Friends.

On December 29, L.S. emailed Sanborn to ask if he would like to have parenting time with their child from December 31, 2015 through January 3, 2016. Sanborn responded:

I'll plan on it. love to spend more time with [child].

To bad [child's] biological mom is to busy parting , and rather give up her parenting time with her own daughter [child]. To Do just that. New years day is your time but I'll still plan on seeing [child] on your day.

There is a new band that was scheduled for this weekend to perform. [Child's] mom mentioned awhile back about a song they play called "Buttered Bun"

Just incase friend #2 Jerry needs an idea for new years.
Thanks .

Later that night, in response to an email from L.S. discussing the pickup time for child, Sanborn wrote, "How about 9am? What's another hour? [Child's] bio mom is already saying she would rather be with her friends for new years than selabrate the new year with her daughter."

On January 18, Sanborn and L.S. exchanged emails regarding the pickup time for their child and agreed that L.S. would pickup the child at 8:00 p.m. At 8:02 p.m., L.S. emailed Sanborn and stated that she was running late because there was a stopped train holding her up. She wrote, "It's not moving, not sure what's going on. Please let your third party know. Sorry!" At 6:15 the next morning, Sanborn replied:

DM@E. Railroad is not reporting any train activity on there tracks at 8 pm. My Third Party also did not witness any train's. My understanding is that [child] wanted to be shown the train at her Waseca pick up location by her bio mom. One can only assume that [child's] bio mom was just late and needed a story. Please. Don't interduce any current or new boy friends to [child]. If this is the correct reason . Its not safe for her and she still talks about Jerry spending the night with her bio mom. [Child's] dad is getting concerned if [child] is traumatized by those very concerning behaviors.

On January 22, 2016, L.S., who was a school employee, went to the school resource officer (SRO) to report the emails. She printed copies of the emails and asked that the SRO submit them to the county attorney's office as a potential violation of the HRO. In April 2016, Sanborn was charged with one count of violating an HRO under Minn. Stat. § 609.748, subd. 6(a)-(b).

The district court held a bench trial. Sanborn testified that he was allowed to discuss "anything regarding parenting our daughter" via email or text messaging and that this included "concerns like behaviors or what the child's been bringing up, or needs or wants, like clothing articles or school concerns." Sanborn stated that he did not feel that he went outside the parameters of the HRO and alleged that "some of" the emails had been doctored with a laptop that L.S. had failed to return to him in the course of the divorce. While Sanborn acknowledged that he had emailed L.S., he claimed that the emails in the record had been edited and that "some words and sentences were added and modified." Although Sanborn testified that he had provided copies of the original unedited emails to his attorney, they are not in the record.

L.S. testified that she felt that the emails "were a poorly veiled way to insult me and what [Sanborn] felt that I did to him in our divorce and relationship" and that she "felt very harassed." L.S. stated that Sanborn was communicating "[u]nder the pretense that he was talking about morals and values . . . saying someone gave up a stable family" and that "it was completely inappropriate for him to say those things to me. What he said was clearly directed at me and was meant to be an accusation of something he thinks that I did."

The district court found that “[Sanborn’s] emails were of a nature meant to belittle and harass [L.S.], including repeated referrals to [L.S.] as the child’s ‘bio mom’ and accusations or inquiries in [L.S.’s] personal affairs.” The district court concluded that Sanborn is guilty of violating the HRO. This appeal follows.

D E C I S I O N

Sanborn challenges his conviction on the ground that the evidence is insufficient to prove the violation of the HRO. The evidence in this matter consisted of the parties’ testimony and the emails exchanged between them. “Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted). When an element of an offense is supported by direct evidence, this court’s 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. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (citing *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)).

Minn. Stat. § 609.748, subd. 6(a)-(b), provides that, when a restraining order has been granted under this section and the “respondent knows of the order,” a violation of the order is a misdemeanor. The parties do not dispute that an HRO was granted and subsequently modified or that Sanborn was aware of it. Thus, the only issue on appeal is whether the content of Sanborn’s emails violated the terms of the HRO.

Sanborn argues that the purpose of Minn. Stat. § 609.748, subd. 1(a)(1) (2014), is “to prohibit repeated and unwanted acts, words, or gestures that have or are intended to

have a substantial adverse effect on the safety, security or privacy of another.” *Dunham v. Roer*, 708 N.W.2d 552, 566 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). He contends that the intent of the modified HRO was “to allow the parties to communicate about parenting time and issues related to the physical and emotional welfare of the child[.]” and that his emails “are not, on their face, intended to have a substantial adverse effect on the safety, security or privacy of [L.S.]”

But Sanborn’s intent is not determinative. The amended HRO states that Sanborn “may use a third party, or e-mail, for the sole purposes of communicating with [L.S.] about parenting time, the child’s illnesses, the child’s medical care or appointments, or the child’s prescribed medication/administration of medication.” The language of the HRO does not contemplate communication about “issues related to the physical and emotional welfare” of the child. Rather, the language of the HRO restricts communication to parenting time, illnesses, and medical care.

On this record, the evidence is sufficient to sustain Sanborn’s conviction of violation of the HRO.

Affirmed.