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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1216**

State of Minnesota,
Respondent,

vs.

Gellis Lee Walton, Jr.,
Appellant.

**Filed July 15, 2019
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-17-8912

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Tracy M. Smith, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of felony violation of an order for protection, arguing that his conviction is not supported by sufficient evidence and that he is entitled to

a new trial because the district court committed plain error that affected his substantial rights by inadequately responding to a question from the jury during deliberations. We affirm.

FACTS

In October 2015, S.H., on behalf of minor A.K., obtained an ex parte order for protection (OFP) against appellant Gellis Walton, Jr. Among other things, the OFP prohibited Walton from contacting A.K. and entering A.K.'s residence, an apartment. At the time, A.K. resided with her mother, who was dating Walton. The OFP remained in effect until October 2017.

On October 6, 2016, A.K. called the police after seeing Walton with her mother inside her apartment. Responding officers informed Walton that an OFP existed and that he could not be at A.K.'s apartment. Respondent State of Minnesota charged Walton with violating the OFP, but the case was dismissed. On February 9, 2017, A.K. called the police because, when she entered her apartment, she heard Walton's voice although she did not see him. She testified that she could hear him in her mother's room. Responding officers verified the existence of an OFP against Walton and arrested him. The state charged Walton with felony violation of an OFP under Minn. Stat. § 518B.01, subd. 14(d)(1) (2016), because he had two qualified domestic-related offense convictions, including a misdemeanor domestic-assault conviction from December 2014, and a gross-misdemeanor violation of an OFP from June 2015.

Walton stipulated before trial that he had two prior domestic-related offense convictions within the past ten years. A.K., C.K., two police officers, and Walton testified

at trial. Walton testified that he thought “we were done with everything” after his October 2016 case was dismissed. When defense counsel asked, “When you say with everything, what do you mean? What were you done with?” Walton replied, “Order for protection, all of that, everything.” He maintained that when the October 2016 case was dismissed, he believed the OFP was also dismissed. On cross-examination, Walton admitted that the responding police officer on October 6, 2016, told him that an OFP was in effect, but he maintained that he did not know that the OFP was still in effect on February 9, 2017.

At the close of trial, the district court instructed the jury as follows:

Violation of an order for protection, defined. Under Minnesota law whoever violates an order for protection granted pursuant to a domestic abuse act or similar law of another state and knows of the existence of the order is guilty of a crime.

Violation of an order for protection, the elements. The elements of violation of an order for protection are: first, there was an existing court order for protection; second, the defendant knew of the existence of the order; third, the defendant violated a term or condition of the order; fourth, the defendant’s act took place on or about February 9, 2017, in Hennepin County.

During deliberations, the jury submitted the following question to the district court:

The second element requires that the defendant knew of the existence of the order. Does the state have to prove that he believed the order was in effect and that he was, therefore, violating the order . . . on February 9, 2017, or does the state only have to prove that he was aware of an order that happens to still be effective regardless of whether he knew of the effectiveness (or duration) of that order?”

The district court answered the jury’s question: “You have been provided with a copy of the instructions, and the instructions are your guide.” The jury found Walton guilty, and the district court sentenced him to 23 months’ imprisonment.

This appeal follows.

D E C I S I O N

Sufficiency of evidence

This court addresses a challenge to the sufficiency of the evidence to support a conviction by conducting “a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict. *Lapenotiere v. State*, 916 N.W.2d 351, 360–61 (Minn. 2018) (quotation omitted). “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 jury 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). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.*

In this case, the state had to prove beyond a reasonable doubt that (1) an OFP against Walton existed on February 9, 2017, (2) Walton knew of the order, (3) Walton violated a

term or condition of the OFP, and (4) Walton committed the crime within ten years of the first of two or more previous qualified domestic-violence-related offenses. *See* Minn. Stat. § 518B.01, subd. 14(a), (b), (d) (2016). Walton argues that the circumstances proved established a reasonable inference that he did not know that the OFP remained in effect on February 9, 2017, and that the evidence therefore is not sufficient to sustain the conviction.

Walton argues that the circumstantial-evidence standard of review applies; the state argues that the direct-evidence standard applies. Direct evidence is defined as “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). The state introduced direct evidence that Walton had knowledge of the OFP on February 9, 2017. An officer testified that he informed Walton on October 6, 2016, that an OFP was in effect. Walton testified to that as well but stated that he believed the OFP had been dismissed along with the charges arising out of the incident on October 6. The jury judged the credibility of Walton’s testimony and the officer’s. Assuming that the jury believed the state’s witnesses and disbelieved any evidence to the contrary, this testimony would have permitted the jury to reasonably find beyond a reasonable doubt that Walton knew of the existence of the OFP on February 9, 2017, and that he violated the OFP. We conclude that the direct evidence admitted at Walton’s jury trial was sufficient to support Walton’s conviction.

Even if the direct evidence alone is insufficient to prove that Walton knew of the existence of the OFP on February 9, 2017, the circumstantial evidence along with the direct evidence is sufficient to prove Walton’s knowledge beyond a reasonable doubt.

Circumstantial evidence is defined as “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599 (quotation omitted). In applying the circumstantial-evidence standard, “we review the sufficiency of the evidence using a two-step analysis.” *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). First, we “identify the circumstances proved, deferring to the factfinder’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (quotation omitted). “After identifying the circumstances proved, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

The evidence proved the following circumstances: (1) on October 20, 2015, the district court issued an ex parte OFP prohibiting Walton from having contact with A.K and entering A.K.’s residence; (2) the OFP was in effect on February 9, 2017; (3) on October 21, 2015, service of process of the OFP could not be effected; (4) on October 29, 2015, the district court ordered alternate service of process, and the OFP was mailed to Walton; and (5) during a domestic incident on October 6, 2016, responding police officers informed Walton that the OFP existed and was effective. These circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. Applying the circumstantial-evidence standard, we conclude that the evidence of Walton’s knowledge of the existence of the OFP on February 9, 2017, is sufficient to support his conviction of violation of the OFP.

District court's response to jury question

Walton argues that he is entitled to a new trial because the district court erred in its response to a jury question during jury deliberations. Walton did not object at trial to the court's response to the jury's question. "When a defendant fails to object at trial, the forfeiture doctrine generally precludes appellate relief." *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). But an appellate court may consider a forfeited error under the plain-error test when an appellant establishes (1) an error, (2) that is plain, and (3) that affected appellant's substantial rights. *Id.*; see *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (discussing plain-error test). If any requirement of the plain-error test is not satisfied, a reviewing court need not consider the others. *Webster*, 894 N.W.2d at 786. If appellant "establishes all three requirements, we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

Here, the district court responded to the jury's question, as follows: "You have been provided with a copy of the instructions, and the instructions are your guide." If a jury requests additional instructions regarding the law during deliberation, "[t]he court may reread portions of the original instructions." Minn. R. Crim. P. 26.03, subd. 20(3)(b); see *State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986) (stating that in response to a jury's question, a district court may "amplify previous instructions, reread previous instructions, or give no response at all").

Walton argues that the district court's response constitutes plain error because the court did not answer the jury's question with a definition for "know," and that the court therefore failed to properly instruct the jury on all elements of the offense. But the court's

instruction regarding the elements of violating an OFP was a verbatim recital of 10 *Minnesota Practice*, CRIMJIG 13.56 (2015), which included all of the offense elements in Minn. Stat. § 518B.01, subd. 14(b), (d).

Walton also argues that the district court misled the jury with its answer regarding the applicable law. The Minnesota Legislature amended Minn. Stat. § 518B.01, subd. 14(d), in 2013. 2013 Minn. Laws ch. 47, § 1, at 204. Before this amendment, two distinct mens rea standards existed, one for a misdemeanor violation of an OFP and one for a felony violation of an OFP. A misdemeanor violation required that the defendant “kn[ew] of the existence of the [OFP],” while a felony violation required that the defendant “knowingly” violate the OFP. Minn. Stat. § 518B.01, subd. 14(a)-(b), (d) (2012). Following the legislature’s amendment, Minn. Stat. § 518.01, subd. 14, contains only one mens rea standard for both misdemeanor and felony violations of an OFP, that is, that the defendant “knows of the existence of the order.” Walton argues that the jury’s question shows that the jury may have been applying an outdated, mens rea standard, and that the jury construed the instructions as suggesting strict liability. Walton fails to explain why the court’s redirection of the jury to the jury instructions already provided did not resolve any confusion by the jury. *See State v. Crims*, 540 N.W.2d 860, 864–65 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996) (stating that a district court “may properly refer to its [jury instruction] when that [jury instruction] provides the jury with the guidance necessary to resolve its confusion”). The court’s original jury instructions clearly state the applicable law.

We conclude that the district court did not err in its answer to the jury's question, let alone plainly err. And even if Walton had satisfied the first and second parts of the plain-error test, he has failed to establish that any error affected his substantial rights.

Affirmed.