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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0805**

State of Minnesota,
Respondent,

vs.

Jarred Isaac Mosdal,
Appellant.

**Filed May 18, 2020
Reversed
Worke, Judge**

Fillmore County District Court
File No. 23-CR-18-390

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

Brett Corson, Fillmore County Attorney, Melissa Hammell, Assistant County Attorney,
Preston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his convictions for stalking and violating an order for protection (OFP) and a domestic-abuse no-contact order (DANCO). Because we conclude that the evidence is insufficient to support the convictions, we reverse.

FACTS

Appellant Jarred Isaac Mosdal and K.M. were married in 2002. In 2012, Mosdal, K.M., and their six children moved from Montana to rural Fillmore County. In March 2018, K.M. moved out of the family home with the children. K.M. obtained an OFP against Mosdal because she had not felt safe living in the family home. On March 21, 2018, Mosdal violated the OFP. Mosdal pleaded guilty to a misdemeanor; as a result, the district court issued a DANCO.

Mosdal began running to deal with the trauma of losing his family. During the months of April and May, he ran over 100 miles and lost approximately 50 pounds. In early April 2018, K.M. saw Mosdal running along highway 250 as she was driving the children home from school. Highway 250 is approximately one-third mile from Mosdal's home. Mosdal then posted on his Facebook page something to the effect of: "Saw a pretty girl while I was running today and hope to see her again sometime." K.M. continued to see Mosdal running after she picked the children up from school. She reported the sightings to law enforcement and was advised to alter her route. K.M. changed her route and avoided seeing Mosdal.

K.M.'s mother regularly hosts Sunday brunch at her home. Mosdal participated in the brunches before the separation and often prepared cinnamon rolls. On April 22, 2018, Mosdal went to K.M.'s mother's home well before her guests, including K.M., arrived and delivered cinnamon rolls.

On May 5, 2018, Mosdal had visitation with the children at a visitation center in Rochester. During this time, K.M. went to Mosdal's home to pick up items for the children. Mosdal had not given K.M. permission to go to his home while he was not there nor did he have any knowledge that K.M. was going to his home. K.M. saw a notebook on a table and photographed pages. One notation read: "K at 2:45." A second notation read: "Walked one mile home. No more suburban at 3:53 p.m. Library." K.M. frequently took the children to the library on Fridays.

In early May 2018, A.J. showed K.M. a rental property. A.J. had not advertised the rental, but a relative told K.M. about it. K.M. did not end up renting it. Later, Mosdal inquired about renting the property. A.J. reported Mosdal's inquiry to law enforcement.

On May 15, 2018, K.M. and Mosdal attended a hearing at the courthouse. When Mosdal left, he believed that he was driving behind K.M.'s vehicle. Mosdal called 911, informed dispatch of the OFP, and stated that he wanted to make a record that he was not following K.M. and was keeping a quarter- to a half-mile distance behind her.

On June 13, 2018, Mosdal was charged with stalking and violating the OFP and the DANCO. *See* Minn. Stat. §§ 609.749, subd. 2(2), 518B.01, subd. 14(b), 629.75, subd. 2(b) (2016). At Mosdal's jury trial, the state argued that the aforementioned incidents constituted Mosdal stalking K.M. by monitoring her and violating the protective orders by

having contact with her. The jury found Mosdal guilty. The district court sentenced Mosdal to 365 days in jail, stayed for two years, and imposed a fine. This appeal followed.

DECISION

Mosdal raises three issues on appeal; he argues that the evidence is insufficient to sustain his convictions, he received ineffective assistance of counsel, and the district court abused its discretion in an evidentiary ruling.

In considering a claim of insufficient evidence, this court's review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To prove that Mosdal stalked K.M., the state had to prove that Mosdal “follow[ed], monitor[ed], or pursu[ed] [her], whether in person or through any available technological or other means.” See Minn. Stat. § 609.749, subd. 2(2). The state also had to prove that K.M. “under the circumstances” felt “frightened, threatened, oppressed, persecuted, or intimidated” by Mosdal’s conduct, which he knew or had reason to know would make her feel that way. See *id.*, subd. 1 (2016).

The state claims that it proved that Mosdal followed, monitored, or pursued K.M. because he “repeatedly showed up where [she] was, was about to be or had recently been.” The incidents include Mosdal: (1) running near his home while K.M. drove by him, (2) posting a public comment on his Facebook page, (3) bringing cinnamon rolls to K.M.’s mother, (4) inquiring about the rental property, and (5) driving behind K.M. The state asserts that Mosdal’s notebook shows that Mosdal was “purposely following, monitoring or pursuing” K.M. But we conclude that the evidence is insufficient to support the conviction.

First, Mosdal ran near his home; he did not monitor or pursue K.M. because after she changed her route she never saw him running again. Second, Mosdal did not monitor or pursue K.M. by posting on his Facebook page, because it was for public viewing and he could not be sure that she would see it. Third, Mosdal did not monitor or pursue K.M. to know that her mother regularly hosted Sunday brunch; Mosdal went to the brunches during the marriage and brought cinnamon rolls. Fourth, Mosdal did not monitor or pursue K.M. when he believed that he was driving behind her because they were leaving the same hearing, he reported the incident and stated that he would soon be turning and not following her, and he was not even sure it was K.M.

The single incident that might constitute Mosdal monitoring K.M.’s behavior would be Mosdal inquiring about the rental property after K.M. looked at it. The evidence showed that the rental property was not advertised, but it did not show how Mosdal learned that the property was available. But even if Mosdal monitored K.M. to discover that she looked at this property, K.M. did not testify that this conduct made her feel frightened, threatened,

oppressed, persecuted, or intimidated. K.M. was not even the person who reported Mosdal's inquiry about the property to law enforcement. There is no record evidence satisfying the element of the offense that Mosdal's inquiry caused K.M. to feel "frightened, threatened, oppressed, persecuted, or intimidated." *See id.* And this is the same for the other incidents of alleged stalking conduct.

K.M. testified that when she saw Mosdal running, she "was surprised and then kind of had sort of a nervous, sick-to-my-stomach sort of feeling." She testified that the Facebook post made her feel "[u]ncomfortable." K.M. testified that the notebook entries: "[M]ade me very nervous, I guess." K.M. did not know that Mosdal was driving behind her after the hearing. K.M. testified that all of the incidents caused her to be "very aware of [her] surroundings." She also testified that she felt that she had to be on alert due to the uncertainty of not knowing when she and Mosdal would cross paths. But the evidence does not show that K.M. felt "frightened, threatened, oppressed, persecuted, or intimidated." *See id.* Therefore, the state failed to prove that Mosdal stalked K.M.

We also conclude that the state failed to prove that Mosdal violated the OFP and the DANCO. The OFP prevented Mosdal from having contact with K.M. "whether in person, with or through other persons, by telephone, mail, e-mail, through electronic devices, social media, or by any other means." The OFP also required Mosdal to stay 500 feet away from K.M.'s residence. Similarly, the DANCO ordered Mosdal to have no direct or indirect contact with K.M. The evidence fails to show that Mosdal's conduct constituted contact with K.M. *See State v. Phipps*, 820 N.W.2d 282, 286 (Minn. App. 2012) ("The phrase 'no contact' is clear and understandable. The common meaning of the word 'contact' is [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.” (quotation omitted)).

K.M. admitted that when she saw Mosdal running, the only contact was “eye contact.” Mosdal posted a public comment on his Facebook page; it was not addressed to K.M. and he had no way of knowing that she would see it. Mosdal brought cinnamon rolls to K.M.’s mother before K.M. arrived for brunch, and there is no evidence that Mosdal asked K.M.’s mother to relay a message to K.M. Mosdal’s inquiry about the rental property was through contact with A.J.’s boyfriend. Mosdal driving behind K.M. cannot equate to contact when they were in separate vehicles and K.M. did not even know that Mosdal was behind her. The evidence fails to establish that Mosdal had contact with K.M.

The DANCO also restrained Mosdal from “harassing, stalking, or threatening” K.M. However, the state failed to meet its burden to establish the elements of the stalking statute. Accordingly, we conclude that the evidence is insufficient to sustain Mosdal’s convictions. Because we reverse Mosdal’s convictions on the basis of insufficient evidence, we do not reach his additional claims on appeal.

Reversed.