

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0186**

State of Minnesota,
Respondent,

vs.

Carter John Ibberson,
Appellant.

**Filed February 8, 2021
Affirmed
Gaïtas, Judge**

Brown County District Court
File No. 08-CR-19-12

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

Roger H. Hippert, New Ulm City Attorney, Thomas L. Borgen, Assistant City Attorney,
New Ulm, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Carter John Ibberson seeks reversal of his conviction for violating a harassment restraining order (HRO). He argues that the HRO was invalid and that the evidence at his jury trial was insufficient to establish his guilt beyond a reasonable doubt.

Because Ibberson's challenges to the validity of the HRO are not properly before us and sufficient evidence supports the conviction, we affirm.

FACTS

Ibberson and J.H. were romantically involved for about one month. During the relationship, Ibberson tracked J.H.'s whereabouts through a location-based social media application. He grew suspicious one night when he saw that J.H.'s ex-boyfriend was near J.H.'s location. In distress, he called and texted J.H. J.H. met with Ibberson in a parking lot and ended their relationship. Ibberson became confrontational and refused to let J.H. leave. When J.H. tried to push Ibberson out of the way, Ibberson contacted the police, reporting that J.H. had assaulted him. The responding officers told J.H. that she should request a restraining order against Ibberson.

After the breakup, Ibberson called J.H., sent her text messages, and drove past her house. J.H. blocked Ibberson's phone number, but he continued to contact her from unknown phone numbers and through messaging applications. Additionally, Ibberson and a friend went to J.H.'s house in the middle of the night and made noise outside J.H.'s bedroom window-well.

Given these unwanted contacts, J.H. petitioned the district court for an HRO, summarizing Ibberson's conduct in an affidavit accompanying her petition. The district court granted J.H.'s petition, issuing an ex parte HRO prohibiting Ibberson from having any contact with J.H. and ordering him to stay away from J.H.'s work and college campus. The HRO also prohibited Ibberson from being within 100 yards of J.H.'s residence.

A sheriff's deputy attempted to serve the HRO on Ibberson several times but was unable to make contact. Nevertheless, Ibberson learned that there was an HRO and that there was paperwork waiting for him at the sheriff's office. When he reported to the sheriff's office, an employee in the records division handed him a copy of the HRO. The employee filled out a "certificate of service of process" confirming Ibberson's receipt of the HRO. That same day, Ibberson then filed a request for a hearing before the district court.

A hearing was held a few weeks later. Ibberson appeared without counsel, as did J.H. and her parents. Ibberson first asked the district court to keep the HRO proceedings confidential, but the district court declined and explained that the law does not provide for confidential proceedings. Next, Ibberson asked the district court to modify the provision requiring him to stay away from J.H.'s college campus so that he could continue to attend sporting events there. The district court granted this request, but ordered Ibberson to stay 100 feet away from J.H. on campus. The modification was memorialized in an amended order, and Ibberson was served with a copy.¹

After the hearing, J.H. and her parents drove home. Once home, they saw Ibberson drive past their house. They called the police. While waiting for the police to arrive, J.H. saw Ibberson drive by the home once again.

The responding officer verified the HRO and called Ibberson's phone to discuss the situation. Ibberson answered, but he denied driving by J.H.'s home.

¹ The amended order reflected the modified term and stated that all other terms of the HRO remained in effect without specifying those additional terms.

Based on the allegations of J.H. and her parents, Ibberson was charged with violating the HRO under Minnesota Statutes section 609.748, subdivision 6(b) (2018). Ibberson moved to dismiss the complaint for lack of probable cause and argued that he had no knowledge that the HRO prohibited him from being within 100 yards of J.H.'s home because he had not been served with a full copy of the HRO. At a hearing on Ibberson's motion, the district court heard testimony from two police officers, the sheriff's office employee who had provided Ibberson with the original HRO, and Ibberson. The district court denied the motion, explaining in a written order that whether Ibberson received a complete copy of the HRO was a fact question for a jury to determine.

Subsequently, Ibberson had a jury trial. The state called as witnesses J.H., her parents, the sheriff's office employee, and the responding police officer. The sheriff's employee testified about her normal practices in serving documents and keeping accurate records. She acknowledged that sometimes she experienced problems with her scanner. But, she testified, she served Ibberson with a copy of the HRO and filled out a certificate of service confirming Ibberson's receipt of the order. The employee acknowledged that later, she mistakenly emailed an incomplete copy of the HRO to Ibberson's attorney. Because the copy she sent the attorney omitted several pages, she subsequently sent the attorney a full copy of the HRO.

Ibberson was the sole witness for the defense. He denied driving past J.H.'s residence on the day in question. Ibberson also maintained that he never received a full copy of the HRO, and so he was unaware of the condition that required him to remain 100

yards away from J.H.'s home. But he admitted that he knew the HRO generally excluded him from going to J.H.'s residence.

The jury found Ibberson guilty of violating the HRO. Following the verdict, the district court sentenced Ibberson to 90 days in jail, but stayed execution of 87 days for one year, and ordered Ibberson to serve three days in jail with two days of custody credit.

Ibberson appeals.

DECISION

I. Ibberson's collateral challenges to the validity of the HRO are not properly before this court.

Ibberson preliminarily challenges the validity of the HRO, raising two legal arguments. First, he contends that the district court exceeded statutory authority by imposing a geographic restriction as a term of the HRO. *See* Minn. Stat. § 609.748, subd. 5(a) (2018) (providing permissible contents of an HRO). Second, he argues that because he was not properly served with a full copy of the HRO, the district court lacked personal jurisdiction over him. Neither of these arguments is properly before us, however.

“As a general rule, a party's failure to appeal the issuance of a court order precludes a collateral attack on that order in a subsequent proceeding.” *State v. Romine*, 757 N.W.2d 884, 889-90 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009). Ibberson did not appeal from the HRO proceedings. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (providing 60-day timeframe to appeal an appealable order). Rather, he now raises his challenges to the HRO for the first time on direct appeal from his criminal conviction for violating the HRO. Because the criminal proceeding is a subsequent and separate matter, Ibberson's

challenges to the HRO are impermissible collateral attacks. Thus, we do not consider his arguments regarding the validity of the HRO. *State v. Harrington*, 504 N.W.2d 500, 503 (Minn. App. 1993) (refusing to consider collateral attack on HRO in reviewing an appeal taken from appellant’s criminal conviction for violating the HRO), *review denied* (Minn. Sept. 30, 1993).²

II. Sufficient evidence supports Ibberson’s conviction.

Ibberson next argues that his conviction rests on insufficient evidence. Specifically, he argues that the state failed to prove beyond a reasonable doubt that he knew the HRO prohibited him from being within 100 yards of J.H.’s home.

An accused may only be convicted “upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). In a criminal trial, the state bears the burden of proving guilt. *See State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). The state can only overcome the presumption of innocence with proof beyond a reasonable doubt of every element of a charged offense. *Id.*

To convict Ibberson of the offense of violating an HRO, the state was required to prove several elements beyond a reasonable doubt. *See* Minn. Stat. § 609.748, subd. 6(b). First, the state was required to prove that there was an existing court order restraining

² Even if we did not view Ibberson’s arguments as collateral attacks on the underlying HRO, his first argument is still not before us because the record reveals that it was not raised in the district court. *Leppink v. Water Gremlin Co.*, 944 N.W.2d 493, 501 (Minn. App. 2020) (“It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court.” (quotation omitted)).

Ibberson from harassing J.H. *See id.* Second, the state had to establish that Ibberson violated a term or condition of the order. *See id.* And third, the state was required to prove that Ibberson knew of the order. *See id.* We recently examined this third element—the knowledge requirement—in *State v. Andersen*, clarifying that “in a prosecution for violating a harassment restraining order, the state must prove that the defendant knew all the facts that would cause him or her to be in violation of the harassment restraining order.” 946 N.W.2d 627, 628 (Minn. App. 2020). Thus, the state was required to prove that Ibberson knew the HRO prohibited him from being within 100 yards of J.H.’s home, which was the condition that the state alleged he violated.

In considering a claim of insufficient evidence, an appellate court performs “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,” was sufficient to allow the jury to reach a guilty verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). And the reviewing 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.” *Ortega*, 813 N.W.2d at 100.

A conviction based on circumstantial evidence receives “heightened scrutiny” on appellate review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Where the evidence of one or more elements of an offense is entirely circumstantial, the more rigorous

circumstantial-evidence standard of review applies. *See id.* at 473-75. Because the state’s evidence of Ibberson’s knowledge was circumstantial, we apply the circumstantial-evidence standard of review in considering his challenge to the sufficiency of the evidence underlying the knowledge element of the offense. *See State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016) (applying standard of review for circumstantial evidence in considering sufficiency of evidence of defendant’s intent).

The circumstantial-evidence test requires a two-step process. First, the appellate court must “identify the circumstances proved” at trial, deferring “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In doing so, the appellate court must “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Second, the court must “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *State v. McAllister*, 862 N.W.2d 49, 54 (Minn. 2015) (quotation omitted). “In the second step, we give no deference to the jury’s choice between reasonable inferences.” *State v. Davenport*, 947 N.W.2d 251, 266 (Minn. 2020).

In considering Ibberson’s challenge to the evidence of his knowledge, we first identify the circumstances proved concerning this element of the offense. *See Griffin*, 887 N.W.2d at 264. Those circumstances are the following: J.H. petitioned for an ex parte HRO alleging that Ibberson had repeatedly made unwanted contact with her, including

appearing outside of her bedroom window in the middle of the night. The district court issued an ex parte HRO prohibiting Ibberson from harassing or contacting J.H., ordering him to stay more than 100 yards away from J.H.'s residence, and excluding him from J.H.'s work and college campus. When Ibberson learned of the HRO, he went to the sheriff's office to retrieve a copy. A records employee handed Ibberson a copy of the HRO and filled out a certificate of service. The district court held a hearing at Ibberson's request, which J.H. and her parents attended, along with Ibberson. Upon returning home from the hearing, J.H. and her parents saw Ibberson drive past their home. J.H. called the police. While waiting for an officer to arrive, J.H. saw Ibberson drive by a second time. The responding officer called Ibberson, and Ibberson denied driving by the residence. He later admitted that he understood an HRO was in place that prohibited him from contacting J.H. or going to her residence.

Next, with these circumstances in mind, we consider whether all reasonable inferences are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Andersen*, 784 N.W.2d at 331. More precisely, we must determine whether the reasonable inferences from the circumstances proved only support the conclusion that Ibberson knew the HRO required him to stay 100 yards away from J.H.'s residence, and are not consistent with some alternative theory of innocence.

Ibberson argues that the evidence was also consistent with the theory that he never received a full copy of the HRO. He points to the testimony of the records employee who served him with the HRO; this witness testified that her scanner occasionally malfunctioned and that she later sent a partial copy of the HRO to Ibberson's attorney but

then corrected her mistake. Ibberson argues the employee's testimony, in conjunction with his own testimony that he never received the page of the HRO containing the geographic restriction at issue, supported an alternative theory of innocence.

We disagree. Considering the "conflicting evidence in the light most favorable to the verdict," *Tscheu*, 758 N.W.2d at 858, we must assume that the jury rejected Ibberson's testimony and accepted the testimony of the sheriff's department employee that she served him with a copy of the HRO. The circumstances proved, and the inferences therefrom, which include the inference that Ibberson was served with a copy of the HRO containing the geographic restriction, are inconsistent with any rational hypothesis of innocence. They are only consistent with the conclusion that Ibberson knew the HRO prohibited him from being within 100 yards of J.H.'s residence.

Beyond the evidence of Ibberson's knowledge, our thorough review of the record convinces us that the trial evidence was otherwise sufficient to support the jury's verdict. Ibberson engaged in a pattern of unwanted contact with J.H., including an uninvited visit to her home in the middle of the night, which prompted J.H. to obtain the HRO. Ibberson was served with the HRO at the sheriff's office. According to J.H. and her parents, Ibberson drove by J.H.'s home immediately after the HRO hearing in the district court. This conduct violated the geographic restriction of the HRO. And when contacted by a police officer, Ibberson denied driving past the residence, suggesting consciousness of guilt. Because the evidence at trial established beyond a reasonable doubt that Ibberson violated the HRO, we affirm his conviction.

Affirmed.