

*This opinion is nonprecedential except as provided by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
A20-0663**

State of Minnesota,
Respondent,

vs.

Melissa Sue Boyd,
Appellant.

**Filed April 5, 2021
Affirmed
Bjorkman, Judge**

Mille Lacs County District Court
File No. 48-CR-19-22

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

Joe Walsh, Mille Lacs County Attorney, Pakou Moua, Assistant County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges her conviction for violating a harassment restraining order (HRO). Because we conclude that sufficient evidence supports the jury's determination that appellant violated the HRO, we affirm.

FACTS

In June 2018, R.S. obtained an HRO against appellant Melissa Boyd. It prohibited Boyd from contacting R.S., but did not prevent the two from being in the same public location so long as Boyd did not “engage in acts of harassment” against R.S. The HRO defined “harassment” as: “a single act of physical or sexual assault or repeated, intrusive or unwanted acts, words or gestures that are intended to adversely affect the safety, security or privacy” of R.S. The HRO was in effect for one year.

In December 2018, R.S. and Boyd attended the same holiday party at a local casino. At some point during that evening, R.S.’s daughter had an altercation with another guest. After the altercation, this guest went to another part of the casino, retrieved Boyd, and brought her into the ballroom where R.S. and her family were eating. After entering the ballroom, Boyd “made eye contact” with R.S., and stared, pointed, and laughed at her. This made R.S. feel a “heightened level of security” and that she “needed to leave,” so she left the ballroom.

Five or six minutes later, while standing alone in the hallway, R.S. turned around to discover that Boyd had followed her out of the ballroom. Boyd then approached R.S., coming within seven or eight feet. While looking at R.S., Boyd said, “Oh, I should just kick your f-cking ass.” R.S. immediately felt threatened and called 911. Boyd remained where she was and stared at R.S. while R.S. was on the phone. R.S. left the casino soon thereafter because she “felt a credible threat of violence just from what just transpired.”

When she got home, R.S. again called 911. She described the incident and reported that while she was on the phone with the previous 911 dispatcher, Boyd had approached

her “laughing” and said “[y]ou f-cking b-tch.” Boyd was subsequently charged with violating the HRO. The matter proceeded to trial and the jury found Boyd guilty. Boyd appeals, arguing the evidence is insufficient to sustain the jury’s determination that she harassed R.S.

DECISION

When considering a sufficiency-of-the-evidence challenge, we “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.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict, assuming the jury disbelieved any contradictory evidence. *Id.* We may not overturn a verdict if the jury could reasonably have found the defendant guilty of the charged offense. *Id.*

A person commits a crime when she knows of and violates the terms of an HRO. Minn. Stat. § 609.748, subd. 6(a), (b) (2018); *State v. Andersen*, 946 N.W.2d 627, 637 (Minn. App. 2020). Boyd argues that the evidence is insufficient to support the jury’s verdict because (1) she did not engage in repeated acts of harassment, and (2) she did not intend her statements to have a substantial adverse effect on R.S.’s safety, security, or privacy. We address each argument in turn.

The HRO prohibited Boyd from “engag[ing] in acts of harassment” against R.S., defining “harassment” to include “repeated, intrusive or unwanted acts, words or gestures.”

We previously considered similar language in the context of an HRO.¹ In *Davidson v. Webb*, the appellant was subject to an HRO under a version of the HRO statute that defined “harassment,” to include “repeated, intrusive, or unwanted acts, words, or gestures.” 535 N.W.2d 822, 824 (Minn. App. 1995) (quoting Minn. Stat. § 609.748, subd. 1(a)(1) (1994)). Although the issue in *Davidson* was whether the evidence supported the issuance of an HRO, we find the analysis instructive because the statutory language in effect at the time closely mirrors the language of the HRO to which Boyd was subject. *Id.* As here, Webb argued that “use of the plural ‘acts,’ ‘words,’ or ‘gestures’ indicated that more than one incident is required to constitute harassment.” *Id.* We disagreed, concluding that “the language indicates only that more than a single word, act or gesture is required.” *Id.* And we determined that committing multiple acts during a single incident met the definition of harassment. *Id.* at 824-25. Using this analysis, Boyd harassed R.S. if she used more than one word, act, or gesture that was intrusive or unwanted.

¹ Boyd argues that she could only have violated the HRO if she committed “repeated incidents” of harassment. This argument is unavailing because it relies on the statutory definition of harassment for purposes of *issuing* an HRO. See Minn. Stat. § 609.748, subd. 1(a)(1) (2018) (stating “harassment” includes “repeated incidents of intrusive or unwanted acts, words, or gestures”). Because Boyd was charged with *violating* an HRO, we are governed by the HRO’s terms. See Minn. Stat. § 609.748, subd. 6(a), (b) (stating that “[a] person who violates a restraining order issued under this section” is subject to criminal penalties where that person “knows of the order”); *Andersen*, 946 N.W.2d at 637 (concluding the state must prove the defendant knew their conduct violated a term of the HRO). For this reason, we analyze Boyd’s conduct under the HRO’s definition of harassment rather than the statutory definition.

The record demonstrates that Boyd committed three such acts on the evening in question.² First, upon entering the ballroom where R.S. was seated, Boyd made eye contact with R.S., and whispered to another person while laughing and pointing at R.S. Second, Boyd followed R.S. out of the ballroom. Boyd did so five or six minutes after R.S. left. This second act is temporally and factually distinct from Boyd's first act. Third, Boyd walked up to within "seven or eight feet" of R.S., saying "[y]ou f-cking b-tch," "I should just kick your f-cking ass," or words to that effect.³ Boyd's three distinct acts—coming into the ballroom and staring at R.S., following R.S. out of the ballroom after she left in distress, and approaching R.S. in the hallway while using threatening language—constitute repeated, unwanted, and intrusive acts. See *Harris ex rel. Banks v. Gellerman*, 954 N.W.2d

² Boyd contends that the state did not advance this "multiple acts" theory at trial and may not do so for the first time on appeal. The record defeats this argument. The state argued all three of Boyd's distinct acts are "direct evidence" that she violated the HRO. The state also argued Boyd displayed "harassing behavior" by "pointing" and "swearing" at R.S., not simply by using vulgar language. Lastly, the state argued the case was about Boyd's "choices"—specifically her choices to "stay in the ballroom," "to stare at [R.S.]," "to make gestures at her," "to point at her," "to whistle about her," "to follow her outside," "to approach her," and to either threaten to harm her or call her a vulgar name. Moreover, the jury was instructed to base its determinations on the evidence, not the arguments of counsel. We presume the jury followed this instruction. See *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) ("It is presumed that the jury follows the court's instructions.").

³ Boyd takes issue with R.S.'s testimony at trial, and asserts that the actual words Boyd used align with what R.S. told the police in her statement from that evening. In this statement, R.S. told police that while she was on the phone with the dispatcher in the casino Boyd had approached her "laughing" and said "[y]ou f-cking b-tch." When questioned about the discrepancies between her statements to the police that night and her testimony at trial, R.S. responded, "I remember she was using vulgar language towards me . . . she did say that 'you f-cking b-tch,'" and confirmed that Boyd's statement to her that night was "a combination of vulgar language."

604, 610 (Minn. App. 2021) (stating “*multiple* incidents of adverse and unwanted contact” constitutes repeated contact). The only remaining question is whether sufficient evidence supports the jury’s assessment that Boyd committed these acts with the intent to harass R.S.

Boyd next asserts that calling R.S. a “f-cking b-tch” evinces “an intent to be impolite, not to threaten.” When considering evidence of intent, we are guided by the principle that “a person intends the natural consequences of his or her actions.” *Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003). The HRO provides that Boyd’s acts are harassing if she “intended to adversely affect the safety, security or privacy” of R.S. The record persuades us that Boyd’s words and acts reflect this intent.

Boyd entered the ballroom with an individual who had just been involved in an altercation with R.S.’s daughter. Boyd made eye contact with R.S. from across the room, then pointed and laughed at her. When R.S. left the ballroom because of Boyd’s actions, Boyd followed. While the two were alone in the hallway, Boyd got up close and made statements R.S. considered so threatening that she immediately called the police and left the casino. Indeed, R.S. was so rattled by Boyd’s words and actions that she called the police a second time, asking officers to meet her at her home. R.S.’s feeling that she was not safe is a natural consequence of Boyd’s words and actions.⁴ This is particularly true

⁴ Boyd contends that the evidence does not show threatening behavior because R.S.’s testimony at trial—that Boyd had threatened to “kick [her] f-cking ass”—is inconsistent with her statements to the police—that Boyd had called her a “f-cking b-tch.” But Boyd does not deny making a vulgar statement while she was alone with R.S. and, in effect, asks this court to conclude that R.S.’s testimony as to how she felt as a result of Boyd’s admitted actions was not credible. We decline to do so because “the jury is in the best

given the history between the parties, which led to the HRO.⁵ When viewed in the light most favorable to the guilty verdict, and assuming the jury disbelieved any evidence in conflict with the verdict, these circumstances amply support the jury's inference that Boyd acted with intent to adversely affect R.S.'s safety or security.

On this record, we conclude that sufficient evidence supports the jury's determination that Boyd violated the HRO.

Affirmed.

position to evaluate the credibility of the evidence.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013).

⁵ The district court found when it issued the HRO that Boyd “intimidates [R.S.] by use of hand gestures, vulgar language and swearing at her”—the same behavior Boyd displayed when she violated the HRO.