

*This opinion is nonprecedential except as provided by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
A20-0678**

State of Minnesota,
Respondent,

vs.

Kevin Ledell Standifer,
Appellant.

**Filed June 14, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-19-25556

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A jury found Kevin Standifer guilty of violating an order for protection after he encountered his former girlfriend at a Walmart. He appeals from his conviction, arguing that the district court violated his right to due process by issuing the order. But Standifer

never contested the order for protection before he was convicted of violating it. Because Standifer's challenge to his conviction is an ineffective collateral attack on the underlying order, we do not address the merits of his constitutional argument. We therefore affirm.

FACTS

In October 2018, the district court issued an emergency *ex parte* order for protection (OFP) prohibiting Kevin Standifer from contact with his former girlfriend, whom we will call Acquaintance to maintain her privacy, based on Acquaintance's allegations of domestic abuse. Standifer received notice of the OFP while he was in custody in the Hennepin County jail, and a deputy sheriff delivered it to him. One year later, Acquaintance summoned police to a Minneapolis Walmart where she worked, alleging that Standifer had entered the store and approached her. The officers viewed a store surveillance video, which corroborated Acquaintance's allegation that Standifer had entered the store. After further investigation uncovered additional alleged contact, the state charged Standifer with three counts of felony violations of an OFP along with felony stalking based on the fact that three incidents were involved.

Standifer moved the district court to preclude the state from prosecuting him for violating the OFP. According to Standifer's factual allegations—allegations that the district court accepted and that we accept as true for the purpose of considering Standifer's motion—the following circumstances concern the OFP. After a Hennepin County deputy served Standifer with notice of the OFP, deputies transferred Standifer to the Wright County jail, where he completed a form indicating his request for a hearing to challenge the OFP. Standifer approached a Wright County jailer, told the jailer that Standifer needed

the form to be submitted, and handed him his completed hearing-request form. Standifer assumed that the deputy would submit the form for filing with the court. Based on that assumption and the fact that he never heard from the district court that a hearing was scheduled, Standifer inferred that the OFP “was no longer in effect.”

Standifer challenged the OFP on a theory that the jailer’s failure to submit his hearing request rendered his prosecution for violating the OFP unconstitutional. The district court denied the motion and the charges proceeded to trial. Trial evidence included, among other things, a certified copy of the OFP (which had remained in effect), testimony from Acquaintance about Standifer’s presence at Walmart on several days supporting the various charges in the criminal complaint, photographs and video footage of Standifer inside the Walmart, and Standifer’s testimony repeating his assumption that the OFP had been rescinded and explaining that his interactions with Acquaintance at Walmart gave him no reason to believe otherwise. The jury found him guilty of two counts of violating the OFP and not guilty on the remaining counts. The district court sentenced Standifer to 30 months in prison.

This appeal follows.

DECISION

Standifer argues that we must reverse his conviction, maintaining that the district court should have granted his motion to preclude the state from prosecuting him for violating an OFP which, according to Standifer, remained in effect without a hearing, in violation of his right to due process. The district court denied Standifer’s motion because it construed the motion as a collateral challenge to the OFP. We review this construction

and conclusion de novo. *See State v. Ness*, 819 N.W.2d 219, 222 (Minn. App. 2012), *aff'd on other grounds*, 834 N.W.2d 177 (Minn. 2013). Our review leads us to the same conclusion.

A criminal trial for violating an OFP is not the proceeding to challenge the validity of the underlying OFP. A party subject to an OFP may challenge its constitutionality, but he may generally do so only by appealing the OFP, not by contesting it collaterally in a criminal prosecution for violating it. *State v. Romine*, 757 N.W.2d 884, 889–90 (Minn. App. 2008), *review denied*, (Minn. Feb. 17, 2009). It is true that we have allowed a defendant to challenge an OFP's constitutionality during a criminal proceeding, but we did so under unique circumstances not present here, expressly observing that it was unclear whether the defendant ever “had an opportunity to appeal from the issuance of the *ex parte* OFP” and that the state failed to argue that the collateral attack was barred. *State v. Phipps*, 820 N.W.2d 282, 285 n.1 (Minn. App. 2012). The state here did make the collateral-attack argument, and Standifer concedes that he failed to appeal the OFP.

Citing the deputy's failure to file his completed hearing-request form, Standifer argues that, as it occurred with the *Phipps* defendant, it is unclear here whether Standifer had an opportunity to appeal the OFP. The problem with Standifer's attempt to align himself procedurally with the *Phipps* defendant is the implausibility of the premise of his constitutional argument. His implied premise is that, by receiving *nothing* from an OFP-issuing district court, one can reasonably infer that the district court must have vacated the OFP. But logic demands a different inference. The district court's silence under the circumstances that Standifer alleged would instead lead an affected party to suspect

that the district court never scheduled a hearing and that, therefore, the OFP remained undisturbed. This suspicion in turn would lead the party to obey the order, not to violate it, while promptly inquiring about the order's status. Such an inquiry here would have confirmed that the OFP remained in effect, leaving Standifer the choice whether to actually request a hearing to challenge it in the district court or to contest it directly on appeal. We conclude that Standifer had the opportunity to appeal the OFP, and the *Phipps* reasoning does not salvage his improper collateral attack.

We will therefore not address Standifer's collateral attack on the OFP's validity in this criminal appeal in which the district court convicted him of violating it.

Affirmed.