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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1444**

State of Minnesota,
Respondent,

vs.

Ishman Lashaunn Richmond,
Appellant.

**Filed August 22, 2022
Reversed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-19-29157

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

Francis J. Rondoni, Golden Valley City Attorney, Nicole J. Appelbaum, Assistant City Attorney, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Ishman Lashaunn Richmond argues that his conviction for violating a domestic-abuse no-contact order must be reversed because respondent State of Minnesota did not prove that he was aware of the order. The state contends that it proved that

Richmond knew the no-contact order existed with evidence in the form of a court record indicating Richmond was “cc’d” with the order. Applying the heightened standard of scrutiny with which we examine convictions based on circumstantial evidence, we conclude that the state did not prove that Richmond was aware of the order beyond a reasonable doubt. Accordingly, we reverse.

FACTS

In November 2019, a police officer pulled over a car and discovered Richmond and his wife together. After running their identities through the police computer system, the officer discovered that a domestic-abuse no-contact order prohibited Richmond from having any contact with his wife. The officer then arrested Richmond, and the state charged him with violating the order. The matter proceeded to trial.

At trial, the state called only the officer who arrested Richmond. Through the officer, the state introduced a copy of the no-contact order and a redacted copy of the Register of Actions for a separate criminal case in which the order was issued.¹ The officer testified that when he checked the order in the police computer system before arresting Richmond, the system indicated that the order was valid and had been served. But the line on the no-contact order itself that designates when the defendant had been served had been left blank and crossed out.

¹ A Register of Actions is a record of the events that occur in district court proceedings. Minn. Stat. § 485.07(1) (2020). Most of the information contained in the Register of Actions introduced in evidence here is redacted, with only a few legible notations relating to the no-contact order and another form created the same day.

In closing arguments, the prosecutor argued that the Register of Actions conclusively proved that Richmond knew of the order. The Register of Actions contains a notation for the no-contact-order entry that states that Richmond—along with the county attorney, sheriff’s office, and local police department—was “cc[’d]” with the order. It also showed that the court prepared a pretrial-release evaluation form for Richmond on the same day as the no-contact order. The prosecutor argued that the Register of Actions showed that Richmond appeared in court and was personally served with the order. Richmond contended that he never received the order and was not aware it existed until his arrest, and that at most the Register of Actions showed that the court mailed the order to him—not that he actually received it.

Before reaching a verdict, the jury asked four questions of the district court: (1) “What is pretrial release evaluation?” (2) “What are the acceptable legal means of notifying someone of an order [for] protection?” (3) “Does the defendant still need to be served the order of protection if they are present at a pretrial release evaluation?” and (4) “Does the defendant need to be present for a pretrial release evaluation?” In discussing the questions with the attorneys, the court noted “I think they’re asking for more evidence essentially.” In response to the jury questions, the court stated:

All of the evidence has already been presented to you, and I can’t provide you with any additional evidence. I am going to direct your attention again to the instructions that I gave you, and I’m going to particularly address your attention to one, the definition of words.

During these instructions, I have defined certain words and phrases. If so, you are to use those definitions in your deliberations. If I have not defined a word or phrase, you

should apply the common, ordinary meaning of that word or phrase.

I'm not going to reread all the instructions to you. You have them. But that is the most I can do for you, because that's the way the rules work here. The evidence is what it is.

After further deliberation, the jury found Richmond guilty of violating the no-contact order. He appeals.

DECISION

Richmond challenges his conviction of violating the no-contact order. Due process requires the state to prove every element of a charged offense beyond a reasonable doubt. *State v. Pakhnyuk*, 926 N.W.2d 914, 919 (Minn. 2019). To determine whether the state met this burden here, we consider whether Richmond's conviction is supported by sufficient evidence.

When evaluating whether sufficient evidence supports a conviction, we carefully examine the record to determine whether the facts—and legitimate inferences drawn from them—would permit the jury to reasonably conclude that the state proved the defendant guilty beyond a reasonable doubt. *State v. Allwine*, 963 N.W.2d 178, 186 (Minn. 2021). But we apply heightened scrutiny to a conviction based on circumstantial evidence. *Id.* Circumstantial evidence is evidence which the jury can use to infer whether the facts in dispute existed or not. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). A conviction is supported by sufficient circumstantial evidence if the reasonable inferences that can be drawn from the circumstances proved are consistent with guilt and “inconsistent with any rational hypothesis except that of guilt.” *Id.* at 598 (quotation omitted).

We apply a two-step analysis to determine whether sufficient circumstantial evidence supports a conviction. *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016). The first step is to identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In identifying the circumstances proved, we consider only the facts proved that are consistent with the jury’s verdict. *Allwine*, 963 N.W.2d at 186. The second step is to examine independently the reasonable inferences that may be drawn from the circumstances proved. *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015). During the second step, we do not defer to the jury’s choice between reasonable inferences. *Allwine*, 963 N.W.2d at 186. With this in mind, we turn to the elements of violating a no-contact order.

A “person who *knows* of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.” Minn. Stat. § 629.75, subd. 2(b) (2018) (emphasis added). To prove Richmond guilty of violating the no-contact order, the state had to prove that (1) there was a no-contact order, (2) Richmond knew the order existed, and (3) he violated the order. *State v. Shaka*, 927 N.W.2d 762, 771 (Minn. App. 2019), *rev. granted* (Minn. Jul. 16, 2019) *and appeal dismissed* (Minn. Nov. 19, 2019). Because the parties agree that the only issue here is whether the state provided sufficient circumstantial evidence to prove that Richmond knew the no-contact order existed, we consider the circumstances proved only with respect to Richmond’s knowledge of the order.

At trial, the state proved the following circumstances. First, in November 2019 a police officer pulled over a car and found Richmond and his wife together. Second, a

domestic-abuse no-contact order issued in August 2019 prohibits Richmond from having any contact with his wife. Third, a redacted copy of the Register of Actions from the case in which the no-contact order was issued notes that Richmond, along with the county attorney, his attorney, and the relevant police department were “cc[’d]” with the no-contact order. Fourth, the Register of Actions also notes that a “Pretrial Release Evaluation Form” was created for Richmond on the same day as the no-contact order. Fifth, according to the arresting officer, the police database indicated that the no-contact order had been served. Mindful of this evidence, we now consider whether the circumstances proved are consistent with guilt and inconsistent with any other rational hypothesis.

One reasonable inference that can be drawn from the evidence is that Richmond appeared at a court hearing at which a domestic-abuse no-contact order was issued and received a copy of that order at the hearing. The creation of a pretrial-release form suggests that Richmond was arrested for the offense in the underlying criminal case and then released upon conditions. If Richmond was released from custody, he could have been given a copy of the no-contact order. This hypothesis is consistent with Richmond’s guilt, and if the circumstances proved are inconsistent with any other rational hypothesis, sufficient evidence supports Richmond’s conviction. *Harris*, 895 N.W.2d at 598.

But there is another rational hypothesis consistent with the evidence and inconsistent with guilt: it could be that the domestic-abuse no-contact order was issued *after* Richmond was released from custody, the order was mailed to Richmond, and he never received it. The address that the court had for Richmond at the time is redacted and the state introduced no evidence of his then-current address. Although the pretrial-release-

evaluation form was created on the same day as the no-contact order, there is no evidence in the record showing that the two documents were created simultaneously. If the order was mailed to Richmond later, as well as to the county attorney, police department, his attorney, and others, it would make sense that the Register of Actions would reflect that all participants were “cc’d” with the order. The entry in the police database indicating that Richmond had been served with the order could also be based on the “cc” line in the Register of Actions. And if Richmond never received the mailed order—and no evidence suggests that he did—then the circumstances proved are rationally consistent with a hypothesis other than guilt.

The state argues that this second hypothesis is not rational for two reasons. First, the state contends that the Register of Actions shows that Richmond appeared for a hearing and was given a copy of the no-contact order at the hearing. But while the Register of Actions supports this inference, it also supports an inference that the no-contact order was issued *after* Richmond was released and was mailed to him. And the state presented no evidence suggesting that complying with the no-contact order was a condition of Richmond’s release from custody. Because we do not defer to the jury’s choice between inferences drawn from the circumstances proved, *Allwine*, 963 N.W.2d at 186, the Register of Actions alone does not prove that Richmond was aware of the order.²

² Further, as Richmond observes, if the state’s hypothesis was accurate, it could have called a witness who witnessed Richmond being served with the order, produced a transcript of proceedings showing Richmond’s presence in court the day the no-contact order was issued, produced a registered mail receipt showing Richmond received a mailed or emailed copy of the order, called the clerk of court to testify what the “cc” notation on the Register

Second, the state asserts on appeal that the police officer's testimony, in combination with the Register of Actions, proves that Richmond was aware of the no-contact order. But the state did not introduce the officer's testimony to prove Richmond's knowledge of the order at trial. The officer only testified that the police system listed the order as served in the course of explaining *why he arrested Richmond*. And in her closing argument, the prosecutor relied exclusively on the redacted Register of Actions to prove that Richmond knew about the no-contact order, not the officer's testimony about the contents of the police database.³

Further, the officer's testimony does not exclude the reasonable possibility that Richmond was not aware of the no-contact order. Although the entry in the police database could be consistent with Richmond's guilt, the state did not provide any foundation for what information that entry was based on. And the Register of Actions, standing alone, does not show that Richmond personally received a copy of the no-contact order.

Accordingly, because the circumstances proved by the state at trial are consistent with the rational hypothesis that Richmond did not receive the no-contact order, the state

of Actions meant, or introduced a transcript of a court proceeding in which Richmond acknowledged being served with the order. The state did not.

³ Nor could the state have used this testimony to prove Richmond knew about the order at trial. Had the state sought to do so, it would have violated the rule against hearsay because the officer would have testified about an out-of-court statement (the contents of the police computer system) to prove the truth of the matter asserted (that Richmond had actually been served with the order). Minn. R. Evid. 801. Hearsay is generally inadmissible and the state points to no exception that would have applied. Minn. R. Evid. 802-04.

did not prove that he knew the no-contact order existed beyond a reasonable doubt.

The evidence underlying Richmond's conviction is insufficient.

Reversed.