

*This opinion is nonprecedential except as provided by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
A23-1205**

State of Minnesota,
Respondent,

vs.

Bradley Joseph Wilson, Jr.,
Appellant.

**Filed July 8, 2024
Affirmed in part, reversed in part, and remanded
Schmidt, Judge**

Cook County District Court
File No. 16-CR-21-27

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Molly Hicken, Cook County Attorney, Grand Marais, Minnesota (for respondent)

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

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and
Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this appeal from the judgments of conviction of stalking, harassment, and violating a harassment restraining order (HRO), appellant Bradley Joseph Wilson, Jr., argues that: (1) the evidence was insufficient to prove his guilt for harassment because the act alleged to constitute the predicate unlawful act of coercion was not illegal; (2) the evidence was insufficient to prove his guilt for stalking because the jury only found that he had committed one predicate act; (3) his convictions of, and sentences for, harassment and violating the HRO must be vacated as lesser included offenses of stalking; and (4) his sentence for gross-misdemeanor harassment must be reduced from 365 days to 364. We reverse the convictions of harassment and stalking because the state failed to prove that the act alleged to constitute the predicate unlawful act of coercion was illegal, and the harassment conviction was necessary to convict Wilson of stalking. Because Wilson does not challenge the conviction for violating the HRO, we affirm that conviction.

FACTS

Wilson and the victim, J.E., worked together at a restaurant. One evening in November 2019, J.E. met Wilson at his apartment. The two drank alcohol and Wilson had J.E. perform oral sex on him. J.E. later noted that she did not want to perform oral sex on Wilson and that in the moment she was struggling to process what was happening.

In January 2020, Wilson told J.E. that he would tell her boyfriend about the encounter if she did not continue talking to Wilson. Wilson also threatened to talk to the restaurant owner to have J.E. fired if she did not continue seeing him.

Wilson continued his threats a couple of times per week throughout 2020. J.E. specifically noted that threats occurred in March, April, and May 2020. J.E. testified at trial that Wilson threatened to rape her “on many occasions,” beginning in March 2020. Wilson’s threats did not stop until J.E.’s last shift at the restaurant in November 2020.

J.E. reported Wilson’s conduct to law enforcement in December 2020. J.E. also sought, and was granted, a HRO against Wilson in December 2020. The HRO required Wilson to have no contact with J.E. and to remain 1,000 feet from her residence.

Officers served Wilson the same day the court granted the HRO. Less than an hour later, officers received a report that, in violation of the HRO, J.E. had received a call and text messages from an unknown number requesting that J.E. not get Wilson “in trouble.” Officers went to Wilson’s apartment to speak with him, but his girlfriend at the time answered the door and told them that Wilson was not there. She also told the officers that she made the call and sent the messages. Officers noticed that Wilson’s boots were still in the apartment and yelled for Wilson to come out to speak with them. Wilson appeared from a different room, talked to the officers, and claimed that he did not know his girlfriend was calling and texting J.E. The officers advised Wilson that if they texted, called, or otherwise contacted J.E. again, Wilson would be arrested for violating the HRO.

In late January 2021, police received a call from J.E. regarding another possible HRO violation. J.E. saw Wilson’s vehicle drive past her home, turn into a parking lot, turn around, and then drive past her home again—all within 1,000 feet of J.E.’s residence in violation of the HRO. Officers contacted Wilson, questioned him about J.E.’s report, and Wilson denied driving the vehicle past J.E.’s house.

In an amended complaint, respondent State of Minnesota charged Wilson with nine counts: stalking—pattern of stalking conduct; three counts of threats of violence; harassment; repeatedly using mail to harass; criminal sexual conduct—5th degree non-consensual sexual contact; and two counts of violating a HRO.¹

A jury trial was held in March 2023. The jury heard testimony from J.E., investigating officers, coworkers at the restaurant, J.E.'s mother, and Wilson's ex-girlfriend, among others. Wilson did not testify. J.E. testified regarding her interactions with Wilson and about threats that he made toward her. Wilson's ex-girlfriend testified that she called and texted J.E. in December 2020 at Wilson's request. And J.E.'s mother testified that J.E. told her that she had been cheating on her boyfriend with Wilson.

The jury found Wilson guilty of stalking, harassment, and violation of a HRO. The jury found Wilson not guilty of the other six charges. The district court sentenced Wilson to five years on supervised probation for his stalking conviction with an 18-month prison sentence stayed for 18 months. The district court also sentenced Wilson to 365 days in jail for his gross misdemeanor harassment conviction, with 332 days stayed for two years and credit for 33 days of time served. Finally, the district court sentenced Wilson to 90 days in jail for his conviction of violating a HRO, with 57 days stayed for two years and credit for 33 days of time served.

This appeal follows.

¹ Count eight cites the December 2020 report of a HRO violation, while count nine cites the January 2021 report of a HRO violation.

DECISION

I. There is insufficient evidence to prove beyond a reasonable doubt that Wilson harassed J.E.

“When evaluating the sufficiency of the evidence, appellate courts 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 of the offense of which he was convicted.” *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 and assume that the fact-finder disbelieved any conflicting evidence. *Id.* The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the state’s burden of proof beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense. *Id.*

A person commits harassment if the person “directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act.” Minn. Stat. § 609.749, subd. 2(1) (Supp. 2019). The state alleged that coercion constituted the “unlawful act” to support Wilson’s harassment charge. The state only alleged that Wilson committed coercion by making “a threat to unlawfully injure a trade, business, profession, or calling,” and cause another to do any act, or forbear doing a lawful act, against their will.² Minn. Stat. § 609.27, subd. 1(3) (2018). The Minnesota Supreme Court has placed significance on the “unlawful” requirement

² Other threats can constitute coercion. *See* Minn. Stat. § 609.27, subd. 1 (2018). But the state only presented evidence on the theory of threats to “unlawfully injure a trade, business, profession, or calling.” *Id.* at subd. 1(3).

because not all threats to injure a trade, business, profession, or calling necessarily violate the statute. *See State v. Jorgenson*, 946 N.W.2d 596, 605 (Minn. 2020) (discussing, in relevant part, the implications of the term “unlawful” in portions of the coercion statute).

Wilson contends that the state failed to prove the “unlawful act” element of harassment. He argues that there is insufficient evidence to establish coercion, the unlawful act alleged by the state to support the harassment charge, because his threat to have J.E. fired did not constitute a threat to unlawfully injure her profession. We agree that the state failed to prove Wilson’s threats were unlawful.

The coercion statute does not define “unlawfully.” As such, we apply the statutory interpretation canons to discern the appropriate meaning of the term. *State v. Beganovic*, 991 N.W.2d 638, 643 (Minn. 2023). In doing so, we must ascertain and effectuate the legislative intent by first examining “the plain meaning of the text.” *Id.*

The Minnesota Supreme Court recently interpreted the meaning of the term “unlawfully” in the context of the first-degree arson statute. *Id.* (citing Minn. Stat. § 609.561 (2022)). The supreme court concluded that the term “unlawfully” was understood as meaning “not authorized by law.” *Id.* (quotation omitted). In the context of a first-degree arson charge, the state must prove that a person set a fire in a manner “not authorized by law.” *Id.* at 654. Although the supreme court in *Beganovic* interpreted the term “unlawfully” in the context of arson, the court’s analysis provides persuasive guidance for our interpretation of “unlawfully” as used in the coercion statute. *See In re J.M.M.*, 890 N.W.2d 750, 754 (Minn. App. 2017) (noting that courts may “borrow from other statutes’ definitions of terms that are undefined in the statute at issue”).

Accepting and applying the supreme court's definition of "unlawfully" to the coercion statute means that the state was required to prove beyond a reasonable doubt that Wilson threatened to injure J.E.'s trade, business, profession, or calling in a manner that was "not authorized by law." Here, the state failed to meet that burden. The record does reflect that Wilson made threats to have J.E. fired if she did not continue seeing him because he and the owner of the restaurant were close. But the state failed to present evidence to prove that Wilson speaking to the owner of the restaurant to try to get J.E. fired was "not authorized by law." While evidence regarding the specific substance of what Wilson planned to say to the restaurant owner may have established that his threats were to "unlawfully injure" J.E.'s profession, the state did not present such evidence at trial.

The state asserts that Wilson's threats were unlawful so long as he had "no legal authority to get J.E. fired." But the state did not present evidence that Wilson, without legal authority, threatened to fire J.E. himself. Instead, the state presented evidence that Wilson threatened to talk to the owner of the restaurant to have their boss fire J.E. The state offered no evidence of what Wilson threatened to tell the boss in order to prove that the conduct was "unlawful."

In addition, in defining "unlawfully," the Minnesota Supreme Court specifically distinguished acts "not authorized by law" from acts that involve "moral turpitude" that are not unlawful. *See Beganovic*, 991 N.W.2d at 643. An employee can threaten to talk to their boss to have another employee fired, which may be morally questionable, but it is not—standing alone—unlawful. Lacking the legal authority to substantiate a threat does not, by itself, violate the law.

It is possible that, had the state presented additional evidence or alternative theories,³ the result would be different. But the state only pursued the theory of coercion under the profession section of the statute. Accordingly, our analysis of the sufficiency of the evidence must be confined to the coercion statute as pursued by the state. That statute requires “a threat to unlawfully injure a trade, business, profession, or calling.” Minn. Stat. § 609.27, subd. 1(3). In this, the method of injury must be unlawful in order to violate the statute. Talking to a person’s superior in an attempt to get them fired could, in the proper circumstances, be an “unlawful” act. But the state only offered evidence that Wilson threatened to talk to the owner of the restaurant. That action, in itself, is not an unlawful injury to J.E.’s profession. Since the state offered no evidence of what Wilson intended to do or say to get J.E. fired—beyond talking to the restaurant’s owner—the state did not present theories that could have allowed the jury to determine Wilson’s threats were “not authorized by law,” such as defamation or slander. While we find Wilson’s behavior abhorrent, the evidence does not establish that Wilson’s threats were to injure J.E.’s profession in a manner “not authorized by law.”

Because Wilson’s threats did not violate the provision of the coercion statute that the state pursued, the threats cannot satisfy the “unlawful act” of coercion which was required to prove harassment. We must, therefore, reverse the harassment conviction.

³ For example, a jury may have found that Wilson’s threat to rape J.E. constituted coercion. *See* Minn. Stat. § 609.27, subd. 1(1) (providing that coercion can be “a threat to unlawfully inflict bodily harm upon . . . the person threatened or another”).

II. Because we reverse the underlying predicate act of harassment, we must also reverse Wilson’s stalking conviction.

Wilson argues the state failed to present sufficient evidence to prove that he stalked J.E. Stalking, as relevant to Wilson’s conviction, means “two or more acts within a five-year period that violate or attempt to violate” certain Minnesota laws. Minn. Stat. § 609.749, subd. 5(b) (Supp. 2019). In other words, Wilson’s conviction of stalking requires the presence of two predicate acts committed within a five-year period. *Id.*

The stalking charge relied on the jury finding that Wilson committed at least two of the other eight charged crimes in order to satisfy the predicate-act requirement. The jury only found that Wilson committed two acts out of the eight charged crimes: harassment and violating the HRO. The jury acquitted Wilson of the other six charged offenses that would have satisfied the predicate-offense requirement.

Our reversal of Wilson’s harassment conviction necessarily requires us to reverse his stalking conviction as the jury found only one other predicate act beyond a reasonable doubt—violating the HRO. Thus, there is insufficient evidence to establish the necessary number of predicate acts.

We reverse Wilson’s convictions for stalking and harassment.⁴ We affirm Wilson’s conviction for violating the HRO. We remand to the district court to vacate the stalking and harassment convictions, along with any fines that accompanied those final judgments.

Affirmed in part, reversed in part, and remanded.

⁴ Wilson’s sentencing issues are moot given our reversal of these convictions.