

*This opinion is nonprecedential except as provided by  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  
A23-1223**

State of Minnesota,  
Respondent,

vs.

Lori Elaine Christensen,  
Appellant.

**Filed August 5, 2024  
Reversed  
Johnson, Judge**

Ramsey County District Court  
File No. 62-CR-21-3355

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Reyes, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

A Ramsey County jury found Lori Elaine Christensen guilty of criminal harassment based on her conduct toward a next-door neighbor. We conclude that the evidence is insufficient to prove that Christensen's conduct caused, or would reasonably be expected

to cause, “substantial emotional distress,” as that term is defined in the harassment statute. Therefore, we reverse the conviction.

## **FACTS**

Christensen lives in a house in White Bear Township in Ramsey County. In late 2019 or early 2020, A.W. and her two children moved into a house that is next door to Christensen’s house. A.W.’s house was owned by her sister, who previously had lived there but had moved out due to her difficulties with Christensen. In conversations with Christensen, A.W. initially denied the relationship with her sister, but Christensen eventually became aware of it.

The relationship between A.W. and Christensen initially was harmonious but eventually deteriorated. Difficulties began in the spring of 2020, when Christensen’s dog bit A.W.’s dog, causing injuries that required treatment. Christensen offered to pay for the treatment but wanted to specify the veterinary clinic. Christensen became upset when A.W. chose a different clinic. Christensen paid for some of the dog’s treatment but refused to pay for all of it. A.W. reported the dog-biting incident to police after Christensen stopped paying for treatment.

After the dog-related dispute, Christensen repeatedly engaged in name-calling (by, for example, calling A.W. “meth head,” even though she does not use methamphetamine), gesturing toward A.W. with a raised middle finger, and using her cell phone to video-record A.W. Christensen’s behavior caused A.W. “a lot of stress” and “heartache.” Christensen’s behavior continued for approximately one year.

In June 2021, the state charged Christensen with two counts of criminal harassment, in violation of Minn. Stat. § 609.749, subd. 2(c)(2) (2020), based on three specific incidents that occurred during a six-month period between November 2020 and May 2021.

The first incident alleged in the complaint occurred on November 20, 2020. A.W.'s 12-year-old son told A.W. that Christensen was yelling at him. After A.W. went outside, Christensen continued to yell, saying that A.W.'s son is the "next Jeffrey Dahmer rapist in White Bear Lake." A.W. called police, who told her to stay inside her house and keep her distance from Christensen.

The second incident occurred a month later, on December 20, 2020. Christensen approached A.W. to complain that A.W.'s son had littered by dropping a plastic yogurt cup and a wrapper on the street. Christensen threatened to call police and to ask the city to impose a \$700 fine. A.W. told her son to pick up the litter, and he did so. Christensen called 911 nonetheless. A police officer responded to the complaint but did not issue a citation.

In April or early May of 2021, A.W. decided to move out of the house. According to A.W., "it was starting to be too much where I couldn't even enjoy the outside of my house or take my dog on a walk or in the backyard." A.W.'s sister put the house on the market in early May 2021.

The third incident alleged in the complaint occurred on May 22, 2021. A.W. was playing basketball with her son at the end of their driveway. Christensen was doing yardwork nearby with her dog on a leash. Christensen walked past A.W.'s driveway with her dog while making a video-recording with her cell phone. Christensen and A.W.

exchanged words. Christensen said, “Do you have something to say to me? Say it to me.” A.W. said, “No, I don’t. . . . Nothing at all.” The two then argued about whether Christensen was on public property and what she had said to her dog. A.W. called police. A.W. told the investigator that the incident made her feel “scared” and “terrified.”

The case was tried to a jury on two days in March 2023. At a pre-trial conference on the first day of trial, the state amended the complaint to allege a single count of criminal harassment. The amended complaint alleged the same three incidents that were alleged in the original complaint. The state called four witnesses. Christensen did not testify. During the cross-examination of A.W., Christensen introduced her cell-phone video-recording of the May 2021 incident and an audio-recording of A.W.’s 911 call.

The jury found Christensen guilty. Christensen’s offense is a felony, rather than a gross misdemeanor because she committed it within ten years of two or more previous qualified domestic-violence-related convictions. *See* Minn. Stat. § 609.749, subd. 4(b). The district court imposed a sentence of 23 months of imprisonment but stayed execution of the sentence and placed Christensen on probation for three years, with 30 days in jail or on electronic home monitoring.

Christensen appeals. With the assistance of appellate counsel, she makes two arguments for reversal. In a *pro se* supplemental brief, she makes four additional arguments. In light of our resolution of the first argument presented by appellate counsel, we need not consider Christensen’s other arguments.

## DECISION

Christensen first argues that the evidence is insufficient to support her conviction. Specifically, she argues that the state did not prove beyond a reasonable doubt that her conduct caused, or would reasonably be expected to cause, “substantial emotional distress,” as that term is defined in the harassment statute.

In analyzing an argument that the evidence is insufficient to support a conviction, this court undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which [s]he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “We assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

### A.

We begin by identifying the applicable statutes. A person commits harassment if he or she does any of the following acts:

- (1) 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;
- (2) follows, monitors, or pursues another, whether in person or through any available technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties; or

(8) uses another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

Minn. Stat. § 609.749, subd. 2(c). In this case, the state alleged and sought to prove that Christensen violated the second paragraph quoted above.

A person is guilty of gross-misdemeanor harassment if the person commits any of the eight types of harassment described above and, in addition,

with the intent to kill, injure, harass, or intimidate another person:

(1) places the other person in reasonable fear of substantial bodily harm;

(2) places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or

(3) causes or would reasonably be expected to cause substantial emotional distress to the other person.

*Id.*, subd. 2(b). This language was inserted into the harassment statute by a 2020 amendment, which became effective on August 1, 2020. *See* 2020 Minn. Laws ch. 96, § 2, at 434-35. In this case, the state alleged and sought to prove that Christensen engaged in the conduct described in the third paragraph of subdivision 2(b), which requires proof of “substantial emotional distress.”

The term “substantial emotional distress” is defined in the harassment statute to mean

mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to [1] seeking psychotherapy as defined in section 604.20, [2] losing sleep or appetite, [3] being diagnosed with a mental-health condition, [4] experiencing suicidal ideation, or [5] having difficulty concentrating on tasks resulting in a loss of productivity.

Minn. Stat. § 609.749, subd. 2(a)(4). This definition was added to the harassment statute by the same 2020 amendment that added the language in subdivision 2(b). *See* 2020 Minn. Laws ch. 96, § 2, at 434. We have inserted numerals into the statutory definition to denote the specifically identified victim responses that may demonstrate the requisite mental distress, mental suffering, or mental anguish.

## **B.**

The issue on appeal is relatively narrow in light of the parties' arguments. Christensen does not argue that the evidence is insufficient to prove that she violated the second paragraph of subdivision 2(c) by following, monitoring, or pursuing A.W. Christensen also does not argue that the evidence is insufficient to prove that she violated the first preamble to subdivision 2(b) by intentionally harassing A.W. Instead, Christensen focuses her argument on the statutory definition of "substantial emotional distress." She argues that the evidence is insufficient on the ground that the state did not prove any of the victim responses that are manifestations of a victim's mental distress, mental suffering, or mental anguish, as required by the statutory definition.

In response, the state concedes that A.W. did not exhibit the first, second, third, or fourth specifically identified victim responses in the statutory definition of "substantial emotional distress" because she did not seek psychotherapy, did not lose sleep or appetite, was not diagnosed with a mental-health condition, and did not experience suicidal ideation. Instead, the state makes three arguments for upholding Christensen's conviction, which we consider in turn below.

### **1.**

The state first contends that the evidence is sufficient to prove substantial emotional distress on the ground that A.W. demonstrated the fifth specifically identified victim response, "having difficulty concentrating on tasks resulting in a loss of productivity." *See* Minn. Stat. § 609.749, subd. 2(a)(4).

In applying that part of the statutory definition of substantial emotional distress, we are mindful that “the meaning of doubtful words in a legislative act may be determined by reference to their association with other associated words and phrases.” *Friese*, 959 N.W.2d at 213 (Minn. 2021) (quotation omitted) (applying associated-words canon to determine whether statute has plain meaning). Specifically, if words or phrases in a statute “are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.” *Id.* (quotation omitted). This is especially true of “words grouped in a list,” which “should be given related meanings.” *Id.* (quotation omitted). Accordingly, the fifth specifically identified victim response—“having difficulty concentrating on tasks resulting in a loss of productivity”—should be understood to require a similar level of mental distress, mental suffering, or mental anguish as the other specifically identified victim responses: seeking psychotherapy, being diagnosed with a mental-health condition, experiencing suicidal ideation, and a loss of sleep or appetite. *See* Minn. Stat. § 609.749, subd. 2(a)(4).

In connection with the fifth specifically identified victim response, the state relies on the following testimony by A.W.:

I was constantly either getting phone calls from my kids. I would be nervous to go to work because I didn’t know what was going to be happening at home. My kids could not go outside. I told them that if I was not home that they were not allowed to go outside.

The state does not contend that A.W. expressly stated that she had difficulty concentrating or that she lost productivity. Rather, the state contends that the jury could have drawn those inferences from her testimony.

Christensen contends in her reply brief that, because the state is relying on inferences, the verdict depends on circumstantial evidence, which implicates a heightened standard of review. “To sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (quotation omitted).

Given the circumstantial evidence in this case, the inference identified by the state is consistent with a rational hypothesis that A.W. had difficulty concentrating and lost productivity while at work to some degree. But the circumstantial evidence also allows a reasonable inference that is consistent with the rational hypothesis that A.W. did *not* have difficulty concentrating and did *not* lose productivity while at work. It is possible that, despite some interruptions, A.W. was able to maintain concentration and productivity.

Thus, the state’s evidence is insufficient to prove the fifth specifically identified victim response in the statutory definition of substantial emotional distress, “having difficulty concentrating on tasks resulting in a loss of productivity.”

## 2.

The state next contends that the evidence is sufficient to prove substantial emotional distress on the ground that, even if Christensen’s acts did not cause A.W. to demonstrate any of the five specifically identified victim responses in subdivision 2(a)(4), A.W.’s mental distress, mental suffering, or mental anguish is demonstrated in other ways. The

state notes that the statutory definition merely “includ[es] but [is] not limited to” the five specifically identified victim responses. *See* Minn. Stat. § 609.749, subd. 2(a)(4).

Christensen contends that the “including but not limited to” language in subdivision 2(a)(4) “must be construed as restricting those unarticulated responses to those similar to those expressly listed in the statute.” She asserts that this case is analogous to *State v. Moore*, 699 N.W.2d 733 (Minn. 2005), in which the supreme court interpreted the statutory definition of “great bodily harm” in the assault statute, which consisted of three specific types of serious bodily harm and, in addition, the catch-all provision “other serious bodily harm.” *Id.* at 738-39 (citing Minn. Stat. § 609.02, subd. 8 (2004)); *see also State v. Dye*, 871 N.W.2d 916, 922 (Minn. App. 2015) (applying *Moore* and concluding that evidence was insufficient to prove great bodily harm). The supreme court reasoned that “the phrase ‘other serious bodily harm’ should be taken in the context of the other three alternative definitions.” *Moore*, 699 N.W.2d at 739. The *Moore* court applied the *ejusdem generis* canon, *id.* at 738-39, which provides that, if a statute includes “specific items followed by a general catch-all term,” the catch-all term should be understood “to capture the same kind or class of items as those specifically identified,” *State v. Khalil*, 956 N.W.2d 627, 638-39 (Minn. 2021).

The *ejusdem generis* canon does not apply to the unspecified type of victim response referenced in subdivision 2(a)(4). The supreme court has applied that canon to general phrases using the words “any other” or the like. *See, e.g., Khalil*, 956 N.W.2d at 638-39 (“any other substance”); *State v. Sanschagrin*, 952 N.W.2d 620, 627 (Minn. 2020) (“other governmental approval”); *Moore*, 699 N.W.2d at 738-39 (“other serious bodily harm”).

But we are unaware of any Minnesota caselaw in which the canon was applied to the phrase “including but not limited to” or the like. In addition, the supreme court has applied the *ejusdem generis* canon to statutes in which general words or phrases *follow* a list of specific words or phrases, not to statutes in which general words or phrases *precede* specific words or phrases. See *Khalil*, 956 N.W.2d at 638-39; *Sanschagrin*, 952 N.W.2d at 627; *Moore*, 699 N.W.2d at 738-39. In this way, the supreme court’s caselaw is consistent with commentary suggesting that the *ejusdem generis* canon should not apply to statutes with a “general-specific sequence.” See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 202-05 (2012). Accordingly, we will not apply the *ejusdem generis* canon to the unspecified type of victim response referenced in subdivision 2(a)(4).

Nonetheless, the associated-words canon ensures that the unspecified type of victim response is understood to require a level of mental distress, mental suffering, or mental anguish that is similar to what would be demonstrated by the five specifically identified victim responses. See *Friese*, 959 N.W.2d at 213. The five specifically identified victim responses typically indicate a high degree of mental distress, mental suffering, or mental anguish, consistent with the concept of “substantial emotional distress.” Indeed, the common and ordinary meaning of the word “substantial” is “considerable in importance, value, degree, amount, or extent.” *State v. Degroot*, 946 N.W.2d 354, 360 (Minn. 2020) (quoting *The American Heritage Dictionary of the English Language* 1738 (5th ed. 2018)).

The state identifies only one unspecified victim response: A.W.’s decision to move out of the house. The state asserts that relocating a family from one house to another house typically is a difficult and stressful experience such that A.W.’s decision to move must

have been motivated by substantial emotional distress. The state relies on A.W.'s testimony that "it was starting to be too much where I couldn't even enjoy the outside of my house or take my dog on a walk or in the backyard."

The state's argument is not persuasive. A.W.'s discomfort while outdoors near Christensen is understandable. But A.W.'s testimony does not describe a level of mental distress, mental suffering, or mental anguish that both caused her to decide to move and is similar in severity to, for example, a mental-health diagnosis or suicidal ideation. The state again relies on inferences drawn from circumstantial evidence. The state's inference may be consistent with a rational hypothesis that A.W. experienced mental distress, mental suffering, or mental anguish of a severity that is similar to the severity of the five specifically identified victim responses and that such mental distress, mental suffering, or mental anguish caused her to decide to move out of the house. But the circumstantial evidence also allows a reasonable inference that is consistent with the rational hypothesis that A.W. did *not* experience mental distress, mental suffering, or mental anguish of such a high severity or that such mental distress, mental suffering, or mental anguish did *not* cause her to decide to move out of the house. *See Harris*, 895 N.W.2d at 598. This is especially so in light of the evidence that A.W. made the decision to move in April or early May of 2021, which was five to six months after the first and second incidents alleged in the complaint—the name-calling incident and the littering incident—and before the third incident.

Thus, the state's evidence is insufficient to prove the unspecified victim response in the definition of substantial emotional distress.

### 3.

The state last contends that the evidence is sufficient to prove substantial emotional distress on the ground that, even if Christensen did not *actually* cause A.W. to experience substantial emotional distress, Christensen engaged in conduct that “*would reasonably be expected to cause* substantial emotional distress to the other person.” See Minn. Stat. § 609.749, subd. 2(b)(3) (emphasis added).

Christensen contends that her conduct was not so serious that it would reasonably be expected to cause a neighbor to respond by seeking psychotherapy, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.<sup>1</sup>

---

<sup>1</sup>Christensen has not challenged the constitutionality of the specific provisions of the harassment statute that underly her conviction. Nonetheless, we are mindful that the harassment statute potentially could punish speech that is protected by the First Amendment. See *In re Welfare of A.J.B.*, 929 N.W.2d 840, 856 (Minn. 2019) (holding that stalking-by-mail provision in Minn. Stat. § 609.749, subd. 2(6) (2014), was unconstitutionally overbroad); *State v. Peterson*, 936 N.W.2d 912, 919-23 (Minn. App. 2019) (holding that stalking-by-telephone provision in Minn. Stat. § 609.749, subd. 2(4) (2016), was unconstitutionally overbroad), *rev. denied* (Minn. Feb. 26, 2020). Specifically, we are mindful that a statute may not criminalize speech based on a speaker’s negligence or what the speaker should have known about another person’s reaction to the speaker’s words. See *A.J.B.*, 929 N.W.2d at 850; *Peterson*, 936 N.W.2d at 920; *cf. Counterman v. Colorado*, 600 U.S. 66, 69 (2023) (holding that, to ensure conformity with First Amendment in criminal prosecution for repeatedly communicating with another person in a manner causing emotional distress, recklessness standard requires state to prove that “defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence”). In applying a statute, it is prudent for an appellate court to avoid an unconstitutional application if it is possible to do so. See *State v. Leonard*, 943 N.W.2d 149, 160 (Minn. 2020); *In re Civil Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007).

We have reviewed the trial transcript as well as the video-recording of the May 2021 incident. The evidence shows that Christensen engaged in conduct toward A.W. that was rude, unkind, and unneighborly. It is reasonable to believe that Christensen's conduct would cause a next-door neighbor at least *some* emotional distress. But the state does not argue that A.W.'s actual response (which we have concluded is insufficient) was atypical or that a reasonable person would have experienced a greater degree of mental distress, mental suffering, or mental anguish than A.W. actually experienced. Thus, the state's evidence is insufficient to prove that Christensen engaged in conduct that would reasonably be expected to cause substantial emotional distress.

In sum, the evidence is insufficient to prove beyond a reasonable doubt that Christensen engaged in conduct that caused or would reasonably be expected to cause A.W. substantial emotional distress, as that term is defined in the harassment statute. Therefore, the evidence is insufficient to support the conviction. In light of that conclusion, we need not consider Christensen's other arguments.

**Reversed.**