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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1983**

State of Minnesota,
Respondent,

vs.

Andy Joseph Hedlund,
Appellant.

**Filed November 4, 2024
Affirmed
Worke, Judge**

Polk County District Court
File Nos. 60-CR-22-1898, 60-CR-22-1980, 60-CR-22-1937, 60-CR-22-2054

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

Greg Widseth, Polk County Attorney, Tanner D. Hermanson, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions for violating a harassment restraining order (HRO), arguing that (1) the prosecutor committed misconduct by eliciting opinion testimony, and (2) the evidence was insufficient to sustain his convictions. We affirm.

FACTS

In late 2021, K.H. was granted an HRO that prohibited her ex-husband, appellant Andy Joseph Hedlund, from contacting her. In April 2022, the HRO was amended to permit Hedlund “texting contact with [K.H.] necessary to arrange parenting time (visitation)” of their children. In November and December 2022, respondent State of Minnesota charged Hedlund with four misdemeanor counts of violating the HRO, in violation of Minn. Stat. § 609.748, subd. 6(b) (2022). Hedlund’s charges arose from text messages that he sent K.H. on four occasions between September and November 2022. Although charged in four separate complaints, the cases were consolidated for trial.

K.H. testified at trial. The prosecutor introduced text messages from four specific dates and asked K.H. if the messages from Hedlund related to visitation or pickup and drop-off of the children. K.H. testified that, in each instance, the messages included content that did not relate to visitation or pickup and drop-off. A deputy sheriff also testified that he cautioned Hedlund about the nature of his texts.

The jury found Hedlund guilty as charged. The district court sentenced Hedlund to 90 days in jail on each count, to be served consecutively, but stayed imposition for one year. This appeal followed.

DECISION

Prosecutorial misconduct

Hedlund first argues that the prosecutor committed misconduct by eliciting inadmissible opinion testimony from K.H. and the deputy. Hedlund did not object at trial. Unobjected-to claims of prosecutorial misconduct are reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The appellant bears the initial burden of establishing error that is plain, and upon doing so, the burden shifts to the state to show a lack of prejudice. *Id.*

“[A]ttempting to elicit or actually eliciting clearly inadmissible evidence may constitute [prosecutorial] misconduct.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Opinion testimony on an ultimate issue is inadmissible when it “embraces legal conclusions” or “render[s] a determination as to whether a defendant’s conduct falls within a legal standard.” *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990); *State v. Gerard*, 832 N.W.2d 314, 317 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). But “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. Lay witness opinion testimony must be “(a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of rule 702.” Minn. R. Evid. 701.

Hedlund argues that the elicited testimony was inadmissible under rule 701 because the prosecutor asked the witnesses for a legal conclusion as to whether Hedlund violated the HRO, which is a legal conclusion on an ultimate issue and is not helpful to the jury.

Hedlund claims that the prosecutor asked K.H. whether “the text messages she received fell within the narrow exceptions set forth in the HRO” and “Hedlund’s text messages violated the HRO.” Having carefully reviewed the record, we discern that Hedlund has misrepresented the prosecutor’s questions. In fact, the prosecutor asked K.H. whether Hedlund’s texts were (1) a request for visitation, or (2) an attempt to schedule child pickup or drop-off. Properly recounted, the prosecutor intended to elicit factual opinions about the meaning of Hedlund’s texts, and not, as Hedlund claims, K.H.’s opinion as to whether Hedlund’s conduct violated the HRO. K.H.’s testimony was helpful because it clarified which of Hedlund’s many, often lengthy, text messages she understood were requests for parenting time.

Hedlund next challenges the following exchange between the prosecutor and the deputy:

Q: And did you give [Hedlund] any caution, or instruction, or any sort of statement on his behavior?

A: I did. When I reviewed the messages, I believed looking over them, I thought that there were some that were outside of the scope of what exceptions were in the HRO and I advised him of this.

Here, again, the prosecutor did not ask for a legal conclusion and the deputy did not provide one. Rather, the deputy testified that he formed an opinion, based on the evidence he gathered during his investigation, and reminded Hedlund that the HRO prohibited certain

conduct. This testimony was helpful because it provided the jury additional evidence that Hedlund knew of the HRO prior to his September 23, September 29, and November 24 text messages.

Hedlund has failed to establish plain error. And even if he had, the state sufficiently demonstrated a lack of prejudice. In evaluating whether a defendant's substantial rights were affected, this court considers "the pervasiveness of improper suggestions and the strength of evidence against the defendant." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotation omitted). The state must show that there is "no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Ramey*, 721 N.W.2d at 302 (quotation omitted).

The state argues that Hedlund's substantial rights were not affected because the evidence against him was strong and any pervasive use of the testimony was, at worst, duplicative because Hedlund's text messages were entered as evidence and available to the jury. We agree.

Here, the terms of the HRO were unambiguous and the state established that Hedlund knew that the order existed. Because the jury needed only to decide whether Hedlund's text messages were to request or schedule parenting time, and the jury could read the texts, it is unreasonable to conclude that the state's reference to K.H. and the deputy's testimony had a significant effect on the verdict.

Sufficiency of the evidence

Hedlund next argues that the state's circumstantial evidence was insufficient to prove that he violated the HRO. When evaluating a sufficiency-of-the-evidence claim,

appellate courts view the evidence “in the light most favorable to the verdict, and [assume] that the [jury] disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). Evidence is sufficient to support a guilty verdict if a jury could find beyond a reasonable doubt that the defendant committed the charged offense. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012).

Reviewing courts apply a two-step analysis when a sufficiency-of-the-evidence challenge relates to circumstantial evidence. *State v. Harris*, 895 N.W.2d 592, 598-601 (Minn. 2017). First, this court identifies the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict.” *Id.* at 600. Second, this court considers “the reasonable inferences that can be drawn from the circumstances proved.” *Id.* at 601. The circumstances proved must, when viewed as a whole, “be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* At this stage, we do not defer to the jury’s choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010).

Hedlund argues that the state failed to prove the knowledge element of the misdemeanor-HRO-violation offense. To establish the knowledge element, the state needed to prove that Hedlund “kn[ew] of the order.” Minn. Stat. § 609.748, subd. 6(b). This requires the state to prove that “the defendant knew all the facts that would cause him or her to be in violation of the [HRO].” *State v. Andersen*, 946 N.W.2d 627, 628 (Minn. App. 2020).

Hedlund argues that the knowledge element required the state to prove that he knew that he was violating the HRO at the time that he sent K.H. the text messages. Hedlund cites our nonprecedential decision in *State v. Zarate* to support his mens rea theory, but seemingly misunderstands our holding in that case. In *Zarate*, an HRO prohibited the appellant from contacting the protected person except for the purpose of discussing their child. No. A22-0905, 2023 WL 3443467, at *1 (Minn. App. May 15, 2023), *rev. denied* (Minn. Aug. 22, 2023). We concluded that the knowledge element required the state “to prove that the defendant knew their conduct would subject them to criminal liability.” *Id.* at 2. And we explained that the state had “to prove that [the] appellant knew the HRO prohibited her from sending . . . text messages that did not relate to the parties’ joint child.” *Id.* at *2. In other words, we required the state to prove that the appellant knew the facts that *would* make her conduct a violation, but we did not require the state to prove that the appellant knew her conduct *was* a violation. *Zarate* cannot be read to include a subjective mens rea element for misdemeanor violation of an HRO.

Here, the circumstances proved include: (1) the district court issued an HRO prohibiting Hedlund from contacting K.H.; (2) the HRO was amended to permit Hedlund texting contact to arrange parenting time and visitation; (3) Hedlund was served a copy of the amended HRO on April 26, 2022; (4) Hedlund sent K.H. text messages in which he acknowledged the terms of the HRO; and (5) the deputy advised Hedlund in early September 2022 that his September 1, 2022 text messages were likely outside the exceptions of the HRO. The only reasonable inference under these circumstances is that Hedlund knew that the HRO existed, knew the terms of the HRO, and therefore knew all

the facts that would cause him to violate the HRO. Thus, we conclude that the evidence was sufficient to sustain Hedland's convictions.

Affirmed.