

*This opinion is nonprecedential except as provided by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
A24-0117**

State of Minnesota,
Respondent,

vs.

Scott Wayne Erickson,
Appellant.

**Filed December 30, 2024
Affirmed
Larkin, Judge**

McLeod County District Court
File No. 43-CR-23-266

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

Marc A. Sebor, Hutchinson City Attorney, Hutchinson, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for trespassing, arguing that the district court abused its discretion by denying his mistrial motion, which was based on the state's repeated violations of a pretrial order excluding evidence regarding the basis for the

underlying trespass notice. Appellant also argues that the evidence at trial was insufficient to sustain his conviction. We affirm.

FACTS

Respondent State of Minnesota charged appellant Scott Wayne Erickson with one count of misdemeanor trespass, alleging that on February 27, 2023, he visited a Holiday Station Store in Hutchinson after being told, on February 13, that he could not return to that property. Erickson was asked not to return to the property because on February 3, he allegedly handed out candy to children, took pictures, and may have taken a picture of a child.

Before trial, Erickson moved the district court to prohibit testimony regarding the reasons why he was excluded from the property. He noted that he was charged with a crime in a separate case for that conduct. The district court granted Erickson's motion, ruling that the state could establish that Erickson was not allowed on the property as a result of a trespass notice, "without getting into any substantial detailed description" of the basis for the notice. The district court also authorized the state to ask its witnesses leading questions to avoid eliciting inadmissible testimony. However, the district court ruled that a statement Erickson had made regarding candy, which had been recorded on an officer's body camera, was admissible.

At trial, TN, a former store director at Cashwise in Hutchinson, testified that Cashwise is owned by Coborn's Incorporated and that Coborn's also owned the nearby Holiday station. TN testified that on February 13, 2023, he "issued [a] trespass" to Erickson, who was "a customer in the Cashwise," and that he had the power to exclude

people from the store. When asked if he had the power to exclude people from the Holiday, TN's response was initially ambiguous, but he acknowledged that he had "the authority . . . to do that." And when asked again if he had the authority, TN responded, "Well, when I issued the trespass for our location, I included that location as well so it would be under that."

The prosecutor asked TN to read part of an incident report, and TN read the following portion out loud: "I issued the trespass and told him that was due to him taking pictures of guests." Defense counsel objected, and the district court stated that it would revisit the issue later. The parties subsequently agreed to redact part of the incident report before presenting it to the jury. The redacted incident report indicated that TN told Erickson he was not allowed at the Holiday station.

TN testified that Erickson refused to sign or accept a trespass notice, but TN "told [Erickson] he was not allowed on this property or Holiday across the lot or any other Coborn's locations." When asked about the trespass notice, TN testified that it was "marked disorderly conduct and harassment"¹ and that it listed the locations from which Erickson was excluded, including the Holiday owned by Coborn's. The trespass notice was redacted to remove any reference to "Disorderly Conduct/Harassment" and admitted into evidence.

AW, a former manager at Cashwise, testified that on the day in question, he accompanied TN when TN attempted to serve the trespass notice on Erickson. The

¹ The defense did not object.

prosecutor asked AW about his conversation with Erickson, and AW stated that there was a “prior incident” that Erickson described as a misunderstanding because he simply “pulled out a thing of sweethearts candy out of his pocket.” At that point, the district court stopped AW’s testimony and told the prosecutor to “move on.” AW testified that TN told Erickson he was not welcome at Cashwise or Holiday, and that Erickson refused to sign or receive the trespass notice. AW also testified that the Holiday station had signage by the door stating that it was owned and operated by Coborn’s. Finally, AW testified that other businesses were located near Cashwise, as well as two parking lots and a road. According to AW, Erickson asked if he “could still drive there,” and AW and TN told him that he could.

After the jury was excused for the day, the district court addressed TN’s testimony that Erickson was taking pictures of guests, and the district court concluded that the state had violated the prior ruling. Defense counsel indicated that TN’s testimony was stopped “in time to prevent the jury from learning anything that was inadmissible.” However, defense counsel moved for a mistrial based on the improper testimony. The district court determined that the testimony violated the court’s prior ruling but did not violate the “spirit” of the ruling because there was no testimony that Erickson was following, taking pictures of, or offering candy to *children*.

The next day, the district court once again addressed the mistrial motion. Defense counsel asserted that the prosecutor had engaged in misconduct by eliciting improper testimony from TN and AW. The district court determined that “there was error” because

the prosecutor violated the court's prior ruling. But the court also determined that it "did not rise to the level of a prejudicial error" and that a mistrial was therefore not warranted.

The trial continued, and a police chief testified that on February 27, 2023, he went to the Holiday station to purchase a beverage and saw Erickson "near the northwest corner of the building, . . . in the parking lot or on the sidewalk." The police chief testified that he knew Erickson was not permitted on Coborn's property, including the Holiday station. The police chief requested assistance at Holiday. According to the police chief, Erickson left the scene, but he was subsequently stopped by officers.

The assisting officer testified that he responded to a trespass-violation call and pulled over the vehicle that Erickson was driving two-and-a-half blocks away from Holiday. The court received a portion of the officer's body-camera video into evidence. In that video, Erickson stated that he had not been served any trespass papers. Erickson also stated that he had been asked to leave the Cashwise because of handing candy out and seemed to acknowledge that he had been asked to stay out of all Coborn's properties. But Erickson also said that "Jill," the Holiday manager, did not have a problem with him being there to remove snow. Erickson later stated that Jill had asked him to "clean out the slush" and that he was "there picking up sh-t, taking care of business."² Erickson said that one of his "accounts" was for snow removal at the Holiday station and that he went there on a regular basis. Finally, Erickson indicated that he was not aware that he was not allowed at the Holiday station. The state rested, and no other witnesses testified.

² During TN's testimony, he acknowledged that Jill was the manager at Holiday. However, he also testified that only the corporate office could rescind a "trespass order."

The district court gave the following cautionary instruction to the jury:

During the case you've heard about occurrences at the Cashwise store in Hutchinson that occurred prior to the trespass notice being issued on February 13th. That evidence was referenced for the limited purpose of context or to assist you in determining whether Mr. Erickson committed the offense with which he is charged for on February 27th, 2023.

Mr. Erickson is not being tried for and may not be convicted of any offense other than the offense with which he [is] charged. You are not to convict Mr. Erickson on the basis of any reference to any prior occurrence. To do so might result in unjust double punishment.

The jury found Erickson guilty as charged, and the district court sentenced him to serve 21 days in jail, concurrent with a sentence on another case.

Erickson appeals.

DECISION

I.

Erickson contends that the district court erred by denying his mistrial motion. He argues that “the state’s repeated violations of the pretrial order excluding information about [his] prior bad act from February 3 were not harmless.” Erickson complains of three violations: (1) TN’s testimony that Erickson had taken pictures of guests, (2) TN’s testimony that Erickson was excluded from the property for disorderly conduct and harassment, and (3) AW’s testimony that Erickson said he pulled “sweethearts candy” out of his pocket.

A mistrial should not be granted unless there is a reasonable probability that the trial would have resulted in a different outcome had the alleged impropriety not occurred. *State v. Spann*, 574 N.W.2d 47, 53 (Minn. 1998); *State v. Clobes*, 422 N.W.2d 252, 255 (Minn.

1988); see *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (“We generally will not reverse a verdict even when improper testimony is presented to the jury unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” (quotation omitted)).

We review the denial of a mistrial motion for an abuse of discretion. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

The state has a duty to prepare its witnesses by defining the acceptable limits of their testimony prior to trial to prevent them from offering improper testimony. *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979). Additionally, a prosecutor engages in misconduct by violating a clearly established order of the district court. *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007).

We conclude that the prosecutor erred. First, the prosecutor asked TN to read part of the incident report’s “probable cause narrative” even though that narrative contained evidence that the district court had ruled inadmissible. As a result, the jury heard that Erickson had been “taking pictures of guests.” Second, the prosecutor asked TN to read a portion of the trespass notice, which resulted in TN testifying that the trespass notice was “marked disorderly conduct and harassment,” in violation of the district court’s order. Third, the prosecutor asked AW about his conversation with Erickson, and AW testified that Erickson said that he had “pulled out a thing of sweethearts candy out of his pocket.” Again, this was a violation of the district court’s order.

In declining to order a mistrial, the district court explained:

[T]here was error yesterday that occurred. I had made a ruling and there were a couple of incidents that started to violate that ruling. . . . [I]t is my belief in reviewing all of this that because it was stopped quickly, it did not rise to the level of a prejudicial error that would justify either a determination of a basis for a mistrial or prosecutorial misconduct that would be causing that prejudicial result.

. . . .

There's an overriding obligation to ensure that the defendant receives a fair trial regardless of evidence of culpability. So the question in my mind really comes down to that. There's no doubt in my mind that there was error. The issue is was that error so prejudicial that it interferes or prevents Mr. Erickson's right to a procedurally fair trial.

In my opinion, the answer to that second question is no. Because the basis of my ruling as I said yesterday is because of the *potentially unsavory implications of the allegations from the February 3rd incident*, we never got to a point with those errors where the jurors got the information that would support that implication. We stopped it quickly enough.

Secondly, there's an appropriate cautionary that can and will be given both before they hear the next exhibit and in the final instructions. And while the fact that the error did not occur in bad faith by the prosecutor really isn't controlling on my decision, even a good faith error can be significant enough that it would require that kind of a conclusion, it is at least a factor and I acknowledge that.

So for those reasons, I'm denying the request for the mistrial

(Emphasis added.)

We understand the district court's reference to "the potentially unsavory implications" to mean an inappropriate predilection for children based on the acts of handing out candy to children and taking pictures of children. In today's world, many people could find such behavior concerning—more so than a general allegation that

Erickson had engaged in harassing behavior and disorderly conduct, and had taken photographs of undescribed individuals.

Indeed, as the district court reasoned in issuing its pretrial ruling, “this is just too risky of a proposition that a jury, even if properly instructed, would view this as an issue of, he apparently did something weird or creepy on February 3rd so, therefore, we better make sure he gets the message.” Thus, in issuing its pretrial order, the district court reasonably determined that evidence regarding Erickson’s alleged interactions with children would give rise to “potentially unsavory implications” and should therefore be excluded as more prejudicial than probative. See Minn. R. Evid. 403 (providing that relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice”); see also *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006) (stating that in determining whether to admit prior-acts evidence, courts should consider whether the probative value is outweighed by the potential prejudice to the defendant).

Despite the violations of the district court’s pretrial ruling, the state did not introduce any testimony that Erickson offered candy to or took pictures of children. As Erickson concedes, “[t]he only detail that was omitted was that the pictures Erickson took were of children.” But the involvement of children was the “unsavory” detail that the district court had sought to exclude. Although TN testified that Erickson was taking pictures of guests and had been excluded from Cashwise for disorderly conduct and harassment, and although AW briefly mentioned candy during his testimony, TN and AW did not mention the alleged involvement of children.

Erickson argues that the harm resulting from the state’s violations of the district court’s pretrial order was exacerbated, and not mitigated, by the district court’s curative instruction. Specifically, he asserts that the district court erroneously instructed the jury to rely on the inadmissible evidence “for the limited purpose of context or to assist [them] in determining whether . . . Erickson” committed the trespassing offense. Erickson argues that “[t]he evidence should not have been considered for any purpose given that it was inadmissible.” We agree. The district court ruled that the evidence was inadmissible; it was therefore inadmissible for any purpose.³ Nonetheless, for the reasons that follow, we are not persuaded that the violations of the district court’s pretrial order resulted in prejudicial error necessitating a mistrial.

Because the underlying error stems from prosecutorial misconduct, we assume without deciding that the misconduct was “unusually serious” and we therefore “require certainty beyond a reasonable doubt that the misconduct was harmless before we affirm.” *State v. Carridine*, 812 N.W.2d 130, 150 (Minn. 2012).

“An error is harmless beyond a reasonable doubt if the jury’s verdict was surely unattributable to the error.” *State v. McInnis*, 962 N.W.2d 874, 886 (Minn. 2021) (quotations omitted). Relevant factors include: (1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who

³ The district court’s curative instruction was seemingly based on Minn. R. Evid. 404(b), which generally excludes evidence of prior bad acts, except for limited purposes, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1). In rendering its pretrial order, the district court discussed Minn. R. Evid. 404, but it appears that the district court ultimately relied on Minn. R. Evid. 403 in excluding the evidence.

offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence. *Id.*

Although the state presented some evidence in violation of the district court's order, it did not present any evidence suggesting that Erickson had interacted inappropriately with children, which was the purpose of the exclusionary order. Thus, the state's conduct did not give rise to the "potentially unsavory implications" that the district court had sought to avoid through its pretrial ruling. Moreover, the testimony at issue was brief, and the state did not discuss it during closing arguments. And, it was not highly persuasive regarding the ultimate issue of whether Erickson had trespassed. Finally, although the curative instruction was imperfect, it correctly instructed the jury that it could not find Erickson guilty "on the basis of any reference to any prior occurrence." On this record, we are satisfied that the jury's verdict was surely unattributable to the error and that any prejudice resulting from the state's improper introduction of the inadmissible evidence was harmless beyond a reasonable doubt. In sum, the district court did not abuse its discretion in assessing the prejudice resulting from the violations of its pretrial order or by denying Erickson's request for a mistrial.

II.

Erickson contends that the evidence was insufficient to sustain the jury's guilty verdict, arguing that it did not "prove that he knew he was not allowed to come back to the parking lot near the Holiday."

A finding of guilt can be based on direct or circumstantial evidence. *See Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (stating that both forms of evidence are entitled

to the same weight). Circumstantial evidence is “evidence from which the [jury] can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotations omitted).

When considering a sufficiency challenge, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the jury believed the state’s witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the jury’s credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant’s guilt. *Bernhardt*, 684 N.W.2d at 476-77.

However, if the state relied on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See Harris*, 895 N.W.2d at 601-03 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that “the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence”). Under the circumstantial-evidence standard of review, we first determine the circumstances proved, disregarding evidence

that is inconsistent with the verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Next, we must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotation omitted). We do not defer to the jury’s choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will not reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643. “[W]e do not set aside verdicts based on speculation.” *Al-Naseer*, 788 N.W.2d at 480.

Erickson was convicted under Minn. Stat. § 609.605, subd. 1(b)(8) (2022), which provides that a person is guilty of a misdemeanor if he “intentionally . . . returns to the property of another within one year after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent.” Generally,

the common requirement of criminal trespass offenses is that the actor be aware of the fact that he is making an unwarranted intrusion, which serves to exclude from criminal liability both the inadvertent trespasser and the trespasser who believes that he has received an express or implied permission to enter or remain.

3 Wayne R. LaFare, *Substantive Criminal Law* § 21.2(c) at 308 (3d ed. 2018) (footnotes omitted) (quotations omitted).

We conclude that, even under the heightened circumstantial-evidence standard, the evidence was sufficient to establish that Erickson was guilty of trespassing. The following circumstances were proved at trial: (1) on February 13, 2023, TN, a Cashwise employee,

told Erickson that he was not allowed at the nearby Holiday station; (2) AW heard TN tell Erickson that he was not welcome at the Holiday; (3) TN had the authority to exclude Erickson from the Holiday; (4) on February 27, 2023, a police chief saw Erickson near the northwest corner of the Holiday station, in the parking lot or on the sidewalk; (5) because he knew that Erickson was not allowed at the Holiday, the police chief requested assistance from another officer; and (6) Erickson—by his own admission—had been removing snow on the Holiday property, and he told the assisting officer that he had an “account” for snow removal at the Holiday and that he went there on a regular basis. These circumstances are consistent with Erickson’s guilt.

Erickson argues that the circumstances proved allow for the reasonable inference that he “did not know that he could not be in the parking lot near the Holiday” and that “he could still have reasonably thought he could be in the parking lot that was shared with other businesses.” This hypothesis is inconsistent with the circumstances proved: Erickson was told that he could not go to Holiday, he admitted that he was on Holiday’s property doing snow removal, he told the assisting officer that he went there on a regular basis, and we assume the jury rejected Erickson’s claim, which was captured on the assisting officer’s body-camera video and admitted as evidence, that he was not aware that he was not allowed at the Holiday station. *See Loving*, 891 N.W.2d at 643 (stating that we disregard evidence that is inconsistent with the verdict).

Because Erickson’s rational hypothesis of innocence is inconsistent with the circumstances proved, it does not provide a basis for relief. *See Al-Naseer*, 788 N.W.2d at 480 (stating that an appellate court does not set aside verdicts based on speculation and that

a defendant is not relying on speculation if the defendant points to evidence in the record that “is consistent with a rational theory other than guilt” (quotation omitted)).

Affirmed.