

*This opinion is nonprecedential except as provided by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
A24-0195**

State of Minnesota,
Respondent,

vs.

Virl Budette Deal, III,
Appellant.

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

Freeborn County District Court
File No. 24-CR-23-846

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

Joel M. Holstad, Albert Lea City Attorney, White Bear Lake, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant challenges his misdemeanor conviction for violating an order for protection (OFP), arguing that (1) the district court erred by not allowing him to challenge the validity of the OFP, and (2) the evidence was insufficient to prove the mens rea required

for an OFP violation. Appellant raises additional arguments in a pro se supplemental brief. We affirm.

FACTS

Appellant Virl Budette Deal, III and H.D. were in a volatile romantic relationship. A district court issued an OFP on April 10, 2023, ordering Deal to have no contact with H.D. “in person with or through other persons, by telephone, mail, e-mail, through electronic devices, social media, or by any other means[.]” A deputy sheriff served Deal with the OFP the following day.

In May 2023, the Glenwood Police Department received a complaint of an OFP violation from H.D. after she received “hundreds of text messages” from Deal over the preceding few days. Glenwood police contacted the Albert Lea Police Department to help connect with Deal. After reviewing the text messages, Albert Lea police spoke with Deal. He admitted to messaging H.D. but said that she had also been messaging him. Albert Lea police arrested Deal and cited him for misdemeanor violation of an OFP.

Before trial, respondent State of Minnesota filed a motion to exclude evidence that challenged the validity of the OFP because “Deal not only had an opportunity to challenge the validity of the order but the Judge denied his request for modification of the order and suggested that if he chose to pursue the matter he should seek a vacation of the order, which he has declined to do.” Deal responded that he should be allowed to testify about his belief that the OFP was invalid because, according to Deal, the OFP was obtained through H.D.’s false statements. The district court granted the state’s motion to exclude testimony about the validity of the OFP because Deal did not appeal the OFP after it was initially issued.

The defense requested a continuance, arguing that Deal could still timely request that the OFP judgment be vacated under Minn. R. Civ. P. 60.02 by establishing that the OFP was obtained through fraud, misrepresentation, or misconduct. The district court denied the request. The case proceeded to a trial by jury.

At trial, a deputy sheriff testified that he served the OFP on Deal on April 11, 2023. H.D. testified that the OFP did not allow Deal to have any contact with her. She then identified the numerous text messages that Deal had sent to her from 35 different phone numbers between May 26 and 27, 2023. Deal testified that H.D. had visited him for four days while the OFP was in effect. He also testified that he recalled seeing a copy of the OFP and did not dispute that he sent H.D. text messages after he received the OFP.

At the end of the trial, the district court instructed the jury on the elements of a misdemeanor OFP violation:

First, there was an existing Court order for protection. Second, the defendant knew of the existence of the order. To know requires only that the defendant believes that the specified fact exists. Third, the defendant violated a term or condition of the order. Fourth, the defendant knew all the facts that made his conduct a violation of the order. Fifth, the defendant's act took place on or about May 27, 2021, and Viril Deal made a wireless or an electronic communication to [H.D.] and either the defendant, Viril Deal, or [H.D.] resided in Freeborn County on that date.

The jury found Deal guilty of the OFP violation. The district court sentenced Deal to 90 days in jail, stayed 60 days, and placed him on probation. Deal appeals.

DECISION

Deal argues that the district court abused its discretion by not allowing him to challenge the validity of the OFP during trial and that the evidence presented at trial was insufficient to establish that Deal acted with the necessary mens rea to be found guilty of a misdemeanor OFP violation. In his pro se supplemental brief, Deal raises additional arguments. We address each argument in turn.

I. The district court did not abuse its discretion by not allowing Deal to challenge the validity of the OFP during trial.

Deal argues that the district court abused its discretion by excluding testimony challenging the OFP's validity. A trial court's "evidentiary rulings will not be reversed absent a clear abuse of discretion." *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020). We "will not lightly overturn a trial court's evidentiary ruling." *Id.* (quotations omitted).

The district court precluded Deal from offering evidence that the OFP was invalid because Deal did not appeal the OFP when it was initially issued. To support its decision, the district court cited to *Steeves v. Campbell*, 508 N.W.2d 817 (Minn. App. 1993), reasoning that a challenge to an OFP must be through "an appeal from the original order." In *Steeves*, we concluded that OFPs "are final orders in special proceedings" that are immediately appealable. *Id.* at 818.

The district court also analyzed *State v. Harrington*, 504 N.W.2d 500 (Minn. App. 1993), *rev. denied* (Minn. Sept. 30, 1993), which involved a harassment restraining order (HRO). In *Harrington*, the district court issued an HRO and the defendants did not appeal its issuance. *Id.* at 501-02. After the defendants were convicted of violating the

HRO, the defendants appealed the convictions and challenged the constitutional validity of the underlying HRO. *Id.* at 502-03. This court concluded that the defendants were “precluded from attacking [the HRO] in this subsequent [criminal] action” because they had not appealed from the original issuance of the HRO. *Id.* at 503.

We conclude the district court correctly relied on *Steeves* and *Harrington* in excluding evidence that would collaterally attack the OFP in the criminal proceeding after Deal failed to appeal the OFP when it was first issued. As a final order in a special proceeding, Deal could have appealed the OFP when it was first issued. *Steeves*, 508 N.W.2d at 818. His failure to do so precludes him from collaterally attacking the OFP in this subsequent criminal action. *Harrington*, 504 N.W.2d at 503.

State v. Romine also provides further support for the district court’s decision. 757 N.W.2d 884 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009). In *Romine*, the defendant appealed an OFP after it was issued, but then voluntarily dismissed his appeal. *Id.* at 888. The defendant was later convicted for violating the OFP and, on direct appeal, he challenged its constitutionality. *Id.* at 889. We concluded that because the defendant had not challenged the OFP after it was issued, “the OFP is a final judgment, and the constitutional validity of the [OFP] stands as law of the case.” *Id.* at 890 (alteration in original) (quotations omitted). Thus, the defendant could not collaterally attack the OFP in the subsequent criminal case concerning the violation. *Id.* at 890.

Deal’s failure to appeal the OFP after its issuance similarly means that the OFP constitutes a final judgment and its validity is law of the case. The district court properly excluded evidence seeking to challenge the final judgment of the prior order.

Deal argues *State v. Phipps* demands a different result. 820 N.W.2d 282 (Minn. App. 2012). In *Phipps*, this court analyzed a defendant's challenge to an OFP's constitutionality during a criminal proceeding for violating the OFP. *Id.* at 285. But the circumstances in *Phipps* differ from this case. In *Phipps*, the record was unclear whether the defendant ever "had an opportunity to appeal from the issuance of the *ex parte* OFP" and the state did not argue that the collateral attack was barred. *Id.* at 285, n.1. Unlike *Phipps*, there is no question that Deal had the opportunity to appeal but did not do so, and the state here is arguing against Deal's attempt to collaterally attack the OFP. Thus, the unique circumstances of *Phipps* are not present in this case.

Deal also cites *State v. Colsch*, 284 N.W.2d 839 (Minn. 1979), to assert that had he appealed from the issuance of the OFP, we may have dismissed his appeal as not ripe for review since no violation had occurred. In *Colsch*, the supreme court held that an appeal of a condition of probation authorizing a warrantless search was premature because no search had yet been made and the nature of the injury was speculative. *Id.* at 842. But unlike in *Colsch*, an appeal from the issuance of the OFP would have addressed a real harm—a protective order that prevented Deal from having any contact with H.D. Appellate courts regularly decide appeals directly from OFPs. *See, e.g., Romine*, 757 N.W.2d at 890; *Steeves*, 508 N.W.2d at 818.

Given Deal's failure to appeal the OFP when it was issued, we conclude that the district court did not abuse its discretion in excluding evidence that would challenge the validity of the OFP in his criminal trial for violating the OFP.

II. The evidence was sufficient to establish that Deal acted with the necessary mens rea to be found guilty of violating the OFP.

Deal contends that the evidence was insufficient to prove the mens rea element of an OFP violation. When considering a sufficiency-of-the-evidence challenge, “we 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[.]” *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). “We view the evidence in the light most favorable to the verdict” and assume the jury disbelieved any contradictory evidence. *Id.* We may not overturn a verdict if the jury could have reasonably found the defendant guilty of the charged offense. *Id.*

A jury found Deal guilty of one misdemeanor count for violating an OFP. Minn. Stat. § 518B.01, subd. 14(b) (2022). The elements of a misdemeanor OFP violation are: a defendant must have (1) known of the existence of the OFP, and (2) violated a condition of that OFP. *Id.*

In support of his mens rea argument, Deal cites to *State v. Andersen*, where the state charged the defendant with violating an HRO by walking within 100 feet of the protected party’s apartment. 946 N.W.2d 627, 629-30 (Minn. App. 2020). The record in *Andersen* reflected that the protected party’s address was marked as confidential in the HRO and the state did not prove that the defendant knew the location of the protected party’s residence. *Id.* Reasoning that the HRO statute did not impose strict liability, this court reversed the defendant’s conviction on sufficiency-of-the-evidence grounds. *Id.* at 633-38. We concluded that “in a prosecution for violating [an HRO], the state must prove that the

defendant knew all the facts that would cause him or her to be in violation of the [HRO,]” including that the defendant’s “presence in a particular location would subject [the defendant] to criminal liability.” *Id.* at 628, 637.

Deal’s reliance on *Andersen* is misplaced. In *Andersen*, we rejected the argument that the defendant could be found strictly liable for violating an HRO when the HRO did not identify the location where the defendant was prohibited from being. *Id.* Here, the OFP unequivocally prohibited contact with H.D. Deal’s skepticism about the validity of the OFP does not discredit that the state provided evidence—and Deal admitted—that Deal knew the OFP existed. The evidence proved Deal’s mens rea beyond a reasonable doubt.

Deal argues that this case presents “unique facts . . . that undermine any finding of [mens] rea.” We disagree. The facts that Deal relies upon do not refute that he knew the OFP existed. Instead, those facts only demonstrate that Deal did not believe that the OFP was valid. Deal’s subjective belief that the OFP was invalid does not render the evidence insufficient that an OFP existed or that he was aware that his conduct violated its terms. The state proved that Deal knew of the OFP which provides sufficient evidence to support the jury’s verdict on the mens rea element.

III. The arguments raised in Deal’s pro se supplemental brief do not warrant relief.

Deal submitted a pro se supplemental brief, which—beyond the arguments we addressed above—raises issues that we construe to include (1) ineffective assistance of counsel; (2) prosecutorial misconduct; (3) jury instruction violations; (4) constitutional violations; (5) due process violations; (6) oath of office violations; and (7) conflicts of interest. After our thorough review of these claims, we discern no error or prejudice and

conclude that Deal's pro se claims do not merit relief. *See State v. Waiters*, 929 N.W.2d 895, 902 (Minn. 2019) ("When our careful review of each claim raised in a pro se supplemental brief leads us to conclude that the claims are without merit, we have not included a detailed discussion of each claim in our opinion."); *State v. Robertson*, 884 N.W.2d 864, 877 (Minn. 2016) ("After carefully considering each argument in full, we conclude that [appellant's] pro se claims lack merit.").

Affirmed.