This opinion is nonprecedential except as provided by Minn.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
A24-1402

State of Minnesota,
Respondent,

vs.

Kirk Keith Oxendine, Jr.,
Appellant.

Filed July 14, 2025
Affirmed in part, reversed in part, and remanded
Smith, John, Judge*

Nobles County District Court
File No. 53-CR-23-8

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

Braden M. Hoefert, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Bond, Judge; and Smith, John, Judge.

---

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's determination that the state provided sufficient evidence to convict the appellant of violating a no-contact order; however, we reverse the appellant's conviction and remand for a new trial because the district court exhibited emergent bias by relying on extra-record information in making its findings of fact and conclusions of law and thus committed structural error.

FACTS

Appellant Kirk Keith Oxendine, Jr. and the victim dated for approximately three years. In or around 2022, the relationship ended because, according to the victim, Oxendine "was really abusive." In 2022, criminal proceedings were initiated against Oxendine and as part of those proceedings, the district court issued a domestic-abuse-no-contact order (DANCO). The DANCO prohibited Oxendine from contacting the victim "directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means." The order was to "remain in effect until the disposition of the case or until further order or modification."

After the DANCO was issued, the victim got a new cell phone and gave the SIM card and phone number associated with her old phone to her friend. The victim did not inform Oxendine that she had done so. In December 2022, the victim was with her friend when her friend received a text message from an unknown number that read, "I'm letting you kno you need too stop whatchu doing." The victim then spoke on the phone with the individual that sent the text from the unknown number, and the victim identified the individual by voice as Oxendine. The victim then informed law enforcement of what had occurred.

The state subsequently charged Oxendine with felony violation of a no-contact order pursuant to Minnesota Statutes section 629.75, subdivision 2(d)(1) (2022). The proceedings for this charge were presided over by the same judge who issued the DANCO. After the district court denied Oxendine's motion to dismiss for lack of probable cause, the case proceeded to a bench trial.

At trial, the state offered, and the district court received, several exhibits into the record, including a copy of the DANCO, a certificate of service of process that reflects that Oxendine was personally served with the DANCO, the text message that allegedly violated the DANCO, and certified copies of Oxendine's previous convictions. The state also called two witnesses—the victim and a jail administrator who personally served Oxendine with the DANCO.

The victim testified to the facts detailed above regarding her relationship with Oxendine and the text message and phone call that occurred in December 2022. During direct examination, the victim stated that Oxendine called her phone from the unknown number in December 2022, but on cross-examination, the victim acknowledged that she could not recall whether this was so or whether she called the unknown number. The victim testified that while on the phone, she said, "Hello," and Oxendine replied, "I'm letting you know . . . what you're doing is that you need to stop." The victim testified that she reported the contact to law enforcement because Oxendine "had a . . . restriction violation order."

The jail administrator testified that he personally served Oxendine with the DANCO as reflected by the certificate of service of process.

Oxendine testified on his own behalf. In his testimony, Oxendine stated that he did not send the text message received by the victim's former phone. He further testified that he never used the phone number that the text message came from and that he had never seen the phone number before.

In a written order, the district court found Oxendine guilty of violating the DANCO. In doing so, the district court found that it had issued a DANCO in August 2022 prohibiting Oxendine from contacting the victim directly or indirectly. The district court also found that "[t]he DANCO was issued at [Oxendine's] bail hearing and its terms were explained to him on the record." Further, the district court found that while Oxendine denied sending the text message, the victim's identification of his voice during a phone call with the number that sent the text "shows that [Oxendine] sent the text." And because Oxendine did not know that the victim had given the phone number to a friend, the district court found that Oxendine sent the text "to what he believed to be [the victim's] phone." After finding that Oxendine had committed three prior domestic-violence-related offenses in the last ten years, the district court found Oxendine guilty of felony violation of a DANCO. The district court subsequently entered a judgment of conviction and sentenced Oxendine to 23 months' imprisonment.

Oxendine appeals.

DECISION

Oxendine raises two issues on appeal. First, Oxendine argues that there was insufficient evidence to convict him because the state did not establish that the DANCO was in effect at the time of the violation. Second, Oxendine argues that he did not receive a fair trial because the judge exhibited emergent bias by relying on personal knowledge of the case in which the DANCO was issued, that was not in the trial record, when finding that Oxendine knew the DANCO existed. For the reasons set forth below, we conclude that while the evidence at trial was sufficient to convict Oxendine, Oxendine did not receive a fair trial because the district court exhibited emergent bias and, as a result, committed structural error. We therefore reverse and remand for a new trial.

I. There was sufficient evidence to convict Oxendine for felony violation of a no-contact order.

When reviewing for the sufficiency of the evidence, 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 of the offence of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). And we view the evidence in the light most favorable to the verdict assuming that the fact-finder disbelieved any evidence that conflicts with the verdict. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).[1] For a defendant to be guilty

[1] Appellate courts "use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *Id.*

of the offense charged, the state must prove each essential element of the offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023).

Oxendine was charged with felony violation of a no-contact order pursuant to Minnesota Statutes section 629.75, subdivision 2 (2022). The section states that a person is guilty of violating a no-contact order if they "know[] of the existence of a domestic abuse no-contact order issued against the person and violates the order." Minn. Stat. § 629.75, subd. 2(b). Consequently, the essential elements that the state must prove beyond a reasonable doubt to convict for violation of a no-contact order are "(1) there was a DANCO, (2) the defendant knew of the existence of the DANCO, and (3) the defendant violated a term of the DANCO." *State v. Shaka*, 927 N.W.2d 762, 771 (Minn. App. 2019) (quotation omitted), *rev. granted* (Minn. July 16, 2019), *and appeal dismissed* (Minn. Nov. 19, 2019). And if charged with *felony* violation of a DANCO under section 629.75, subd. 2(d)(1), the state must also prove that the defendant had "two or more previous qualified domestic violence-related offense convictions" within the previous ten years.

Oxendine challenges the sufficiency of the evidence with regard to the first element, that there was a DANCO in effect at the time of the alleged violation. Conceding that a DANCO had been issued against him, Oxendine argues that the state failed to establish that the DANCO was still in effect when the alleged violation occurred. We disagree.

When, as here, a conviction is based on circumstantial evidence, a "heightened two-step test" is applied to evaluate the sufficiency of the evidence. *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021). The first step is to identify the circumstances proved by the state. *State v. Loveless*, 987 N.W.2d 224, 247 (Minn. 2023). In doing so, we assume the jury resolved factual disputes consistent with the verdict. *Id.* Second, we independently examine the reasonableness of any inference that might be drawn from the circumstances proved. *Id.* To affirm, "the circumstances proved must be consistent with guilt and inconsistent with any rational hypotheses except that of guilt." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010). But we will not overturn a conviction based on "mere conjecture." *McInnis*, 962 N.W.2d at 890-91 (quotation omitted). And "we consider the evidence as a whole and not as discrete and isolated facts. *Loveless*, 987 N.W.2d at 247 (quotation omitted).

Viewing the evidence in the light most favorable to the verdict, the circumstances proved relevant to Oxendine's argument are as follows: a DANCO was issued by the district court four months prior to the alleged violation. The DANCO was to "remain in effect until the disposition of the case or until further order or modification." And the victim testified that she reported the text message and phone call to police because Oxendine had a "restriction violation order."

Oxendine argues that there is insufficient evidence to support his conviction because the state did not establish that DANCO was still in effect at the time of the alleged violation. But given that only four months had past between the issuance of the DANCO and the alleged violation, the jury could legitimately infer that the case in which the DANCO was issued remained active at the time of the alleged violation. When considering this together with the victim's testimony that she reported the phone call and text message to police based on her personal knowledge that Oxendine had a "restriction violation order," it was reasonable for the fact-finder to infer that the DANCO remained active at the time of the alleged violation. *Griffin*, 887 N.W.2d at 263 (stating the evidence is sufficient when "the facts in the record and the *legitimate inferences that can be drawn from those facts*" could reasonably lead the finder of fact to conclude that the defendant is guilty (emphasis added)).

Oxendine argues that the victim's testimony does not support a rational hypothesis that the DANCO remained in effect for two reasons. First, Oxendine argues that the victim's testimony "did not specifically [establish] that she knew or believed a DANCO prohibited [Oxendine] from contacting her" on the date of the alleged violation. However, the victim testified that she *reported the contact to police* because he had a "restriction violation order" which clearly indicates that she believed that an order prohibited Oxendine from contacting her. While the victim did not explain why she believed as much, the fact-finder could reasonably infer that the DANCO remained active based on that belief and the mere four months that past between the issuance of the DANCO and the alleged violation. *See id*.

Second, Oxendine argues that "it is unclear from the trial record whether [the victim] was referring to the . . . DANCO" at issue in this case. Oxendine posits that the victim could have been referring to a "harassment restraining order" or "an order for protection." But there was only one order at issue in this case restricting Oxendine's conduct, the DANCO that he allegedly violated. Thus, the fact-finder could legitimately infer that the victim was referring to the DANCO at issue in this case when she testified that Oxendine had a "restrict violation order," *see id.* Furthermore, without facts supporting his assertion in the record, Oxendine's assertion amounts to mere conjecture that the victim was referring to an order other than the DANCO at issue in this case. *McInnis*, 962 N.W.2d at

890-91 (stating we will not overturn a conviction based on "mere conjecture") (quotation omitted)).

In sum, the record supports a rational hypothesis consistent with guilt, that the DANCO was in effect at the time of the alleged violation. Because Oxendine does not identify any reasonable hypotheses inconsistent with guilt, the evidence was sufficient to convict Oxendine of felony DANCO violation. *Andersen*, 784 N.W.2d at 330 (stating that we affirm the sufficiency of circumstantial evidence when the circumstances proved are "consistent with guilt and inconsistent with any rational hypotheses except that of guilt").

II. The district court committed structural error by exhibiting emergent bias when it relied on personal knowledge in making its findings of fact and conclusions of law.

Oxendine also argues that he did not receive a fair trial because the district court did not act as an impartial trier of fact. Oxendine argues that the district court exhibited emergent bias by relying on its personal knowledge of the criminal proceedings underlying the DANCO when finding him guilty. The state responds that the district court did not exhibit emergent bias because it did not conduct an independent investigation into extra-record facts. We consider each argument below and agree with Oxendine.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to be tried in front of an "impartial jury." U.S. Const. amend. VI; Minn. Const. art. I, § 6. "Although the right to a trial before an impartial judge is not specifically enumerated in the Constitution, this principal has long been recognized by the United States Supreme Court." *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (citing *Rose v. Clark*, 478 U.S. 570, 577 (1986)). In considering whether a judge was not impartial we presume that the district court "discharged its judicial duties properly." *State v. Lopez*, 988 N.W.2d 107, 116 (Minn. 2023) (quotation omitted).

Oxendine argues that the district court did not act as an impartial trier of fact because it exhibited emergent bias. Emergent bias occurs when a trier of fact who is initially unbiased is transformed from "an unbiased [trier of fact] into a partial one." *Id.* at 117. A trier of fact exhibits emergent bias when it conducts an independent investigation into prejudicial extra-record information and when it fails to "set the knowledge aside and consider only the evidence adduced in deciding the case." *Dorsey*, 701 N.W.2d at 252. But when a trier of fact relies merely on "general knowledge" outside of the record, obtained during the course of "ordinary affairs," it does not commit emergent bias. *See Lopez*, 988 N.W.2d at 120-21 (concluding that court's reliance on extra-record "general knowledge" of the COVID-19 pandemic did not result in emergent bias). When a trier of fact exhibits emergent bias, it commits structural error, and proof of prejudice to the defendant is not required to demonstrate the need for a new trial. *Lopez*, 988 N.W.2d at 117, 119. Whether a defendant was deprived of an impartial fact-finder presents a constitutional question that we review de novo. *Id.* at 120.

Oxendine argues that when the district court found that "[t]he DANCO was issued at [Oxendine's] bail hearing and its terms were explained to him on the record," the district court exhibited emergent bias because those facts were not in the trial record. Oxendine asserts that it is reasonable to infer that the judge, who presided over both this case and the DANCO case, conducted an independent investigation into facts of the DANCO case to support its findings in this case. The state concedes that there are no facts in the trial record to support the district court's finding but argues that the district court judge did not conduct an independent investigation but rather relied on general information obtained in the normal course of their role as a judge in making this finding.

As an initial matter, we agree with the parties that there are no facts in the record that support the district court's finding that "[t]he DANCO was issued at [Oxendine's] bail hearing and its terms were explained to him on the record." Consequently, the district court relied on extra-record information in finding Oxendine guilty of felony violation of a no-contact order. And the extra-record information was more than mere general information, it directly supported an essential element of the charged crime, that Oxendine knew of the existence of the DANCO. *Shaka*, 927 N.W.2d at 771.

Further, while the record is not conclusive as to how the district court judge obtained the extra-record information, the fact that the district court judge who made the finding in this matter also issued the DANCO in a separate criminal matter, supports a reasonable inference that the district court judge conducted an investigation into the facts of the criminal matter in which the DANCO was issued. *See Lopez*, 988 N.W.2d at 120-21 (rejecting a claim of emergent bias because there was not a "reasonable inference that the court conducted an independent investigation" into extra-record facts). Consequently, the district court was transformed into a partial trier of fact when it relied on extra-record information, that could reasonably be inferred to have been obtained through an independent investigation, when it found Oxendine guilty of felony violation of a no-contact order. *See Dorsey*, 701 N.W.2d at 252-53 (discerning structural error when the district court relied on extra-record information obtained through an independent investigation); *Lopez*, 988 N.W.2d at 120-21 (requiring that there must be a "reasonable inference" that the trier of fact conducted an independent investigation).

The state argues that, like in *Lopez*, the district court did not transform into a partial trier of fact because there is no evidence that it conducted an independent investigation. The state asserts that the district court instead permissibly relied on information that it obtained in the course of its "ordinary affairs," and therefore did not exhibit emergent bias. The supreme court in *Lopez*, however, rejected a claim of emergent bias because there was no "*reasonable inference* that the [district] court conducted an independent investigation" because it was relying on its knowledge of the "general effect of the [COVID-19] pandemic on businesses." *Id.* (emphasis added). Here, such a reasonable inference exists because, by issuing the DANCO, the district court judge had specific knowledge of how the DANCO was issued.

Furthermore, the information relied on in this case is distinct from the information relied on in *Lopez*. In *Lopez*, the district court relied on "observations" about the impact of the COVID-19 pandemic made during the course of "ordinary affairs." *Id.* at 121. And in *Lopez*, the information relied on by the district court went only to a witness's credibility. *Id.* at 122. Here, by contrast, the district court relied on information that was specific to Oxendine that went to an essential element of the charged offense, that he knew of the existence of the DANCO at the time of the alleged violation. *See Shaka*, 927 N.W.2d at 771 (providing that knowledge of the existence of a DANCO is an essential element of the crime of violating a DANCO). And, contrary to the judge in *Lopez*, the district court judge did not obtain this information based on observations made during the course of "ordinary affairs," and instead obtained it as a result of the judge's professional role as the judge issuing the DANCO in the underlying criminal case. *See* 988 N.W.2d at 120-21.[2] Contrary to the state's position, *Lopez* supports our conclusion that the district court exhibited emergent bias.

In sum, the district court exhibited emergent bias when it relied on extra-record information and failed to set that information aside when making its findings of fact. *See Dorsey*, 701 N.W.2d at 252. As a result, the district court committed structural error, and Oxendine is entitled to a new trial. *Lopez*, 988 N.W.2d at 117, 119

To conclude, Oxendine has not demonstrated that the evidence was insufficient to convict him of felony violation of a no-contact order, and we therefore affirm the district court's determination that the evidence presented by the state was sufficient to convict Oxendine. However, in finding Oxendine guilty, the district court exhibited emergent bias, thereby committing structural error and necessitating a new trial. We therefore reverse the district court's judgment of conviction and remand the case for a new trial.

Affirmed in part, reversed and remanded.

[2] The state also argues that it is reasonable to assume that the district court did not need to rely on extra-record knowledge when it made the finding that "[t]he DANCO was issued at [Oxendine's] bail hearing and its terms were explained to him on the record" because the finding can be established by the habit of the district court. However, the state provides no legal authority, and we are aware of none, that permits a district court to base its findings of fact on its habits. We therefore consider the argument forfeited. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (considering arguments not supported by legal authority to be forfeited).