

*This opinion is nonprecedential except as provided by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
A25-1001**

State of Minnesota,
Respondent,

vs.

David Anthony Tuinder,
Appellant.

**Filed May 18, 2026
Reversed
Smith, John, Judge ***

Ramsey County District Court
File No. 62-CR-24-4144

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

Irene Kao, St. Paul City Attorney, Kimberly Woodgate, Assistant City Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Wheelock, 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NONPRECEDENTIAL OPINION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 reverse appellant David Anthony Tuinder’s conviction for violation of an order for protection (OFP) because, even though his communications with the mother of his son were restricted to “parenting-time issues only” through the Our Family Wizard platform, his messaging about the best method of delivering birthday and Christmas presents to his son were not a prohibited contact.

FACTS

Tuinder and the victim, S.Y., were in an on-again, off-again relationship between 2013 and 2016. They have a joint child who was eight years old at the time of trial in March 2025.

In January 2022, S.Y. petitioned the district court for an OFP because Tuinder was acting “very belligerent, angry, scary, and was yelling.” Two years later, in April 2024, the district court amended the OFP and extended its duration until April 2026. The amended OFP prohibited Tuinder from contacting S.Y. “in person, with or through other persons, by telephone, mail, e-mail, through electronic devices, social media, or by any other means.” The amended OFP contained two exceptions. The first exception allowed Tuinder to contact S.Y. “through Our Family Wizard (OFW)¹ exclusively to discuss parenting time issues only.” The second exception permitted contact when S.Y. called Tuinder for him to have contact with their joint minor child.

¹ S.Y. testified that Our Family Wizard is “a family court app that [the parties] use to communicate and coparent respectfully.”

In response to prior communications through OFW with S.Y, Tuinder sent S.Y. a message on OFW on June 21, 2024, stating that he had bought various gifts for their son and wanted to deliver them for him to enjoy. Tuinder offered to either meet at a police station to exchange the gifts or to mail the gifts to S.Y.'s home. S.Y. did not respond to this question. Tuinder sent another message through OFW four days later, on June 25, asking again whether they could meet at the police station or if he could mail gifts to S.Y.'s home. S.Y. then called law enforcement and reported Tuinder's messages as a violation of the OFP.

On June 26, 2024, the state charged Tuinder with a violation of an OFP under Minnesota Statutes section 518B.01, subdivision 14(b) (2022). The matter proceeded to a jury trial in March 2025. The jury heard testimony from S.Y., a deputy from the Hennepin County Sheriff's Office, and Tuinder's sister-in-law, A.J.

S.Y. testified that, prior to the June 21 and 25 OFW messages, she and Tuinder had previously discussed how he could deliver their son's gifts. S.Y. explained that Tuinder had not been exercising his supervised parenting time and, had he done so, Tuinder could have delivered the gifts in-person during those supervised visits at the visitation center. She testified that she understood that Tuinder only made about \$780 per month in disability benefits and that he bore the costs associated with supervised visits, which was \$300 per hour-and-a-half visit. S.Y. testified that, other than supervised in-person visits, Tuinder was only permitted 15-minute phone calls with their son, and that there was no other method of delivering the permitted gifts.

Before resting, the state introduced testimony from the deputy who served the amended order for protection on Tuinder in March 2024. After the state rested its case, Tuinder moved for a judgment of acquittal. He argued that the state’s circumstantial evidence left the jury to infer facts from the OFW messages and that there was a “plausible hypothesis other than guilt” because his messages were “consistent with the carveout in the OFP.” Tuinder added that his messages related to a parenting activity (delivering birthday and Christmas gifts to his son) and that he merely attempted to facilitate delivery through S.Y. at a safe and neutral location.

The state argued that the jury still had to resolve a factual dispute—that being, whether Tuinder violated the OFP. The district court agreed with the state and denied Tuinder’s motion. It stated, “At this point with the evidence from the state . . . I think that the jury could absolutely find that . . . there was a violation of the term that said that parenting time issues could be discussed.”

Tuinder’s only witness was his sister-in-law, A.J. A.J. testified that she had known Tuinder for ten years and that they spoke once a week. A.J. explained that Tuinder gave her money to set up the OFW app on her phone because he is not “text savvy.” A.J. testified that Tuinder never used OFW himself, that it was “solely on [her] phone,” and that she was the only one who knew how to use it. A.J. added that she tried setting up the app on Tuinder’s phone but there “wasn’t enough memory” on it. And when she tried showing him how to use it, Tuinder “didn’t know what he was doing.”

A.J. testified that generally Tuinder would ask her to send messages to S.Y. through OFW. She explained, “[Tuinder] would call me and say, ‘Hey, can you send [S.Y.] a

message asking her to reach out to this visitation place?’ ‘Can you send [S.Y.] a message asking her how I can get [our son] gifts?’” A.J. stated, “[t]he words are all mine. He knew the subject. He didn’t know what was being said.” For the message sent on June 21, Tuinder asked A.J. to send S.Y. a message about how to deliver the gifts to their son, but “not necessarily what [A.J.] wrote.” A.J. also testified that she would normally send screenshots of the messages that she would send to S.Y. beforehand. On June 25, however, A.J. was in a hurry and forgot to send Tuinder a screenshot of the message sent.

After a single-day jury trial, Tuinder was found guilty of violating the order for protection. The district court sentenced Tuinder to 60 days in jail, stayed for one year.

DECISION

Tuinder argues that the state presented insufficient evidence to prove that his conduct violated the OFP. He alternatively argues that the evidence was insufficient to prove that he acted with the necessary mens rea to be guilty of violating the OFP.

When reviewing the sufficiency of the evidence, we must “determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.” *State v. Smith*, 9 N.W.3d 543, 564-65 (Minn. 2024). In doing so, we view the evidence in the light most favorable to the verdict. *Id.* at 565.

Under the circumstantial evidence standard of review, we first “winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in “a subset of facts that constitute the circumstances proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quotation omitted). “Second, we

consider whether the reasonable inferences drawn from the circumstances proved . . . are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotation omitted). We view the record as a whole, not isolated facts. *Id.*

A jury found Tuinder guilty of misdemeanor violation of an OFP under section 518B.01, subdivision 14(b). To sustain his conviction, the state was required to prove beyond a reasonable doubt that (1) Tuinder knew an OFP was in effect and (2) that he violated a term or condition of that OFP. Minn. Stat. § 518B.01, subd. 14(b) (“[W]henver an order for protection is granted by a judge . . . and the respondent or person to be restrained knows of the existence of the order, violation of the order for protection is a misdemeanor.”); *State v. Hinton*, 702 N.W.2d 278, 283 (Minn. App. 2005).

The circumstances proved include the following: there was an OFP in existence; the OFP prohibited Tuinder from contacting S.Y. “in person,” “with or through other persons,” or in any manner except through the OFW platform to discuss “parenting time issues only”; Tuinder was personally served with the OFP by the county’s deputy; Tuinder gave A.J. money to set up the OFW app on her phone; Tuinder would call or message A.J. and ask her to send S.Y. messages through OFW on his behalf; while Tuinder did not direct what words should be used, he knew the subject-matter of the messages; and on June 21 and 25, 2024, S.Y. received messages on OFW from Tuinder asking how he could deliver their son’s Christmas and birthday presents.

We next consider whether the reasonable inferences drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the

guilty verdict and “inconsistent with any rational hypothesis other than guilt.” *Smith*, 9 N.W.3d at 565 (quotation omitted). At this stage, “we give no deference to the fact[-]finder’s choice between reasonable inferences.” *State v. Hassan*, 977 N.W.2d 633, 640 (Minn. 2022) (quotation omitted).

We conclude that the circumstances proved, when viewed as a whole, are consistent with a reasonable inference that Tuinder’s messages were permitted contact because they related to “parenting-time issues.” The substance of Tuinder’s messages relate to the best method of delivering his son’s birthday and Christmas gifts—whether that be in-person at a safe and neutral location such as a police station, or by mailing the gifts to S.Y.’s home. In addition, the messages that Tuinder sent in June appear as a “follow up” from the messages he sent the month prior, when he asked about potentially delivering the gifts to their son at the *visitation center*—the only place where he was permitted to spend time with his son. Tuinder specifically stated, “I have a couple of years of birthday and Christmas gifts that I would like to give to [my son] on my first visit with him. Would you be okay with this?” In response to that message, S.Y. indicated that she would be open to it so long as she “inspected” them first. S.Y. did not object to Tuinder’s request then, but she expressed such an objection in her testimony at trial even though Tuinder’s two messages show his efforts to deliver gifts to his son. The only difference is that the latter message reflects Tuinder’s attempt for a safe exchange or mailing of the gifts. We conclude that to arrange “parenting time” with his son, Tuinder must be given some leeway to determine logistical matters, such as delivering gifts to his son. For instance, had S.Y. declined Tuinder’s attempt to exchange the gifts at the police station or mail them to her home, then

Tuinder's only avenue for delivering the gifts would be to schedule a time at the visitation center.

Finally, we are not convinced that A.J.'s involvement here establishes that Tuinder violated the OFP. Although A.J. was a third party here, the messages were sent through the approved communication platform and related to parenting-time issues. Tuinder did not enlist A.J. to circumvent the OFP's restrictions. Rather, he relied on her assistance because of his documented learning disability, below-average literacy, and difficulty using technology. A.J. served as a "functional conduit" that enabled Tuinder to engage in otherwise permitted communication methods about his son. Construing the OFP otherwise would essentially punish Tuinder's reasonable efforts to comply. One goal of the Domestic Abuse Act is to punish violations of protection orders and protect victims from further harm. However, a conviction in this case would not, on balance, be consistent with the remedial, nonpunitive purposes of the Domestic Abuse Act by imposing punitive consequences under these facts. *See Rew v. Bergstrom*, 845 N.W.2d 764, 791 (Minn. 2014) (recognizing that section 518B.01 was enacted "for a remedial, nonpunitive purpose" of protecting victims of domestic abuse, and "not to punish abusers for their conduct.").

Because Tuinder's messages are so closely related to "parenting-time issues," we conclude that the evidence is insufficient to sustain Tuinder's conviction under Minnesota Statutes section 518B.01, subdivision 14(b).

Reversed.