

*This opinion is nonprecedential except as provided by  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  
A25-1158**

State of Minnesota,  
Respondent,

vs.

Chue Pao Her,  
Appellant.

**Filed June 8, 2026  
Affirmed  
Johnson, Judge**

Dakota County District Court  
File No. 19HA-CR-24-1590

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

Kathryn M. Keena, Dakota County Attorney, Caitlin M. Prokopowicz, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa A. Haley, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Frisch, Chief Judge; and Johnson, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

Chue Pao Her was convicted of the felony-level offense of violating an order for protection (OFP) within ten years of two or more previous qualified domestic-violence-related-offense convictions. The conviction in this case is based on evidence that Her sent

eight lengthy text messages to a woman despite the fact that an OFP prohibited him from contacting her. Her argues that the evidence is insufficient to prove that he is the person who sent the text messages. We conclude that the circumstantial evidence is sufficient to support the conviction. Therefore, we affirm.

## **FACTS**

Her and J.R. were in a romantic or sexual relationship that lasted eight years. In June 2022, J.R. sought and obtained an OFP against Her. Her violated the OFP on the day it was served on him. Her was convicted of a felony-level OFP-violation offense in the Ramsey County District Court. In December 2022, he was sentenced to 20 months of imprisonment, with 180 days of custody credit.

In July and August 2023, shortly after his release from prison, Her again violated the OFP. Her again was convicted of a felony-level OFP-violation offense, this time in the Dakota County District Court. In February 2024, he was sentenced to 18 months of imprisonment, with 196 days of custody credit. Meanwhile, in October 2023, J.R. obtained an extension of the OFP, which prohibits Her from contacting J.R. for a period of 50 years.

On August 5, 2024, Her was released from prison and placed on supervised release. Her's supervised-release agent met him at the prison upon his release and specifically instructed him to not contact J.R., either by telephone, text, or a third person. The following day, the supervised-release agent received a text message from (612) xxx-xx53 stating, "This is Chue Her. I got a phone." The supervised-release agent later used that telephone number to communicate with Her. The supervised-release agent received a text message from (612) xxx-xx53 in which the sender said that he had gotten a job. After a warrant

was issued for Her's arrest, Her's supervised-release agent sent a text message to (612) xxx-xx53 to tell Her that he should turn himself in to law enforcement.

On the day of Her's release from prison, J.R.'s mother received three telephone calls that she believed were placed by Her. The caller ID during at least one of the calls indicated that the call was placed from Hogmaster, a business where J.R.'s mother believed that Her was employed. At least one other call was from (612) xxx-xx53. In each call, the caller asked about J.R. and her whereabouts. J.R.'s mother recognized the caller's voice as Her's voice based on conversations she had had with Her, which had occurred several months or more than a year prior. J.R.'s mother reported the calls to law enforcement.

Five days later, on August 10, 2024, J.R. received a series of eight lengthy text messages from (612) xxx-xx53, a telephone number that she believed belonged to Her. The sender expressed anger at J.R. for being a "snitch" and causing the sender to be "locked up." One message said: "I'm going to kill you when I see you b\*\*\*\*. F\*\*\* you and everything that you love . . . . When I see you I'm going to hurt you." Based on the content and the writing style of the text messages, and the fact that Her recently had been released from prison, J.R. believed that Her had sent the messages. She contacted law enforcement.

The state charged Her in Dakota County with a felony-level OFP violation within ten years of two or more previous qualified domestic-violence-related-offense convictions, in violation of Minn. Stat. § 518B.01, subd. 14(d)(1) (2024).

The case was tried to the district court on one day in December 2024. The state called five witnesses and offered eleven exhibits. J.R., J.R.'s mother, and Her's supervised-release agent testified to the facts described above.

After the state rested, Her requested that he be allowed to represent himself for the remainder of the trial. The district court granted the request. Her testified briefly, in a narrative fashion, that he “never got a phone number or a cellphone number or a phone number that was registered to” him and that he turned himself in to Ramsey County law-enforcement officers after he learned that there was an outstanding warrant for his arrest. On cross-examination, Her testified that he was aware of the extended OFP and knew that he was prohibited from contacting J.R. He also acknowledged that he previously had been convicted of crimes and sent to prison because J.R. had reported his violations of the OFP, and he acknowledged that he was released from prison on August 5, 2024. But he denied sending the eight text messages that J.R. received on August 10, 2024. In closing argument, the prosecutor urged the district court to find Her guilty based on the eight text messages that were sent to J.R. on August 10, 2024.

The district court filed a nine-page order in which it made numerous findings, including a finding that Her’s testimony was not credible. The district court found Her guilty. The district court imposed a sentence of 39 months of imprisonment. Her appeals.

### **DECISION**

A person who violates an OFP is guilty of a crime. Minn. Stat. § 518B.01, subd. 14(a); *see also State v. Andersen*, 946 N.W.2d 627, 637 (Minn. App. 2020); *State v. Hinton*, 702 N.W.2d 278, 283 (Minn. App. 2005). The crime is a felony “if the person violates this subdivision . . . within ten years of the first of two or more previous qualified domestic violence-related offense convictions.” Minn. Stat. § 518B.01, subd. 14(d)(1).

Her argues that the evidence is insufficient to support the conviction. Specifically, he argues that the state did not prove beyond a reasonable doubt that he is the person who sent the eight text messages to J.R. on August 10, 2024. Accordingly, the sole issue on appeal is identity.

A.

To determine whether evidence is sufficient to support a conviction, this court ordinarily undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “We assume that the [factfinder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

The above-described standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). The state argues that Her’s identity was proved by direct evidence because Her’s supervised-release agent testified that he communicated with Her using the (612) xxx-xx53 telephone number. Even if we assume that Her’s telephone number was (612) xxx-xx53, an inference is necessary to find that Her (rather than some other person) was the person who sent the eight text messages to J.R. from that number on August 10, 2024. *See State*

*v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (contrasting direct and circumstantial evidence). Thus, the conviction depends on circumstantial evidence, and we must apply the standard of review applicable to circumstantial evidence. *See State v. Ulrich*, 3 N.W.3d 1, 11 (Minn. 2024).

If a conviction is based on circumstantial evidence, we apply a heightened standard of review with a two-step analysis. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026); *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). At the first step of the circumstantial-evidence analysis, we “identify the ‘circumstances proved.’” *State v. Isaac*, 9 N.W.3d 812, 815 (Minn. 2024) (quoting *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021)). “The first step requires us to ‘winnow down the evidence presented at trial by resolving all questions of fact in favor of the [factfinder’s] verdict,’ which results in ‘a subset of facts that constitute the circumstances proved.’” *Firkus*, 31 N.W.3d at 478 (quoting *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017)). The winnowing-down process “protects the well-established legal principle that the [factfinder] is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 479 (quotation omitted).

At the second step of the analysis, we “consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* at 478 (quotations omitted). At the second step, we independently examine the reasonableness of the inferences drawn from the circumstances proved. *See id.* We do not give deference to the factfinder’s choice

among reasonable inferences at this step. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

## **B.**

At the first step of the circumstantial-evidence analysis, we must identify the circumstances proved relevant to whether Her is the person who sent the eight text messages from (612) xxx-xx53 to J.R. on August 10, 2024. *See Firkus*, 31 N.W.3d at 478.

The relevant circumstances proved are as follows. On two prior occasions, Her was convicted of violating an OFP that prohibited him from contacting J.R. On August 5, 2024, Her was released from prison. On that day, J.R.’s mother received three telephone calls from a person who asked about J.R. and her whereabouts. J.R.’s mother recognized the caller’s voice as Her’s voice based on prior conversations with him. The caller ID on at least one of the calls indicated that the call was placed from Hogmaster, a business where J.R.’s mother believed that Her was employed. At least one other call was from (612) xxx-xx53. On August 10, 2024, J.R. received a series of eight lengthy text messages from (612) xxx-xx53. The text messages expressed anger at J.R. for being a “snitch” who caused the sender to be “locked up.” Based on the content and style of the text messages, and the fact that Her had recently been released from prison, J.R. believed that the messages were sent by Her. Her’s supervised-release agent met Her upon his release from prison on August 5, 2024. A person later sent the supervised-release agent a text message from (612) xxx-xx53, stating, “This is Chue Her. I got a phone.” The supervised-release agent thereafter used the (612) xxx-xx53 number to communicate with a person he believed to be Her. After a warrant was issued for Her’s arrest, Her’s supervised-release agent sent a text

message to (612) xxx-xx53 to tell Her that he should turn himself in to law enforcement. Her turned himself in to Ramsey County law-enforcement officers after learning that there was an outstanding warrant for his arrest.<sup>1</sup>

At the second step of the analysis, we must determine “whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty.” *Firkus*, 31 N.W.3d at 478 (quotations omitted). The state contends that the circumstances proved support a reasonable inference that Her sent the text messages at issue to J.R. on August 10, 2024. We agree. Given the circumstances proved, a factfinder rather easily could infer Her was the person who sent the eight text messages to J.R. on August 10, 2024.

Next, we must determine whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are “inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted). Her contends that there is “a reasonable, rational inference that others had access to that

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<sup>1</sup>We reject Her’s argument that the circumstances proved should include three additional facts. First, Her asserts that his supervised-release agent lost touch with him after August 6, 2024. That is not a circumstance proved because the supervised-release agent testified that he lost contact with Her only temporarily and communicated with Her again via text messages after August 6, 2024. Second, Her asserts that cellular-telephone records and cellular-provider information about the (612) xxx-xx53 number and the associated cellphone were not admitted at trial. That is true but is not a circumstance proved because “the absence of evidence in the record regarding a certain circumstance does not constitute a circumstance proved.” *State v. German*, 929 N.W.2d 466, 473-74 (Minn. App. 2019). Third, Her asserts that no evidence was introduced about the location or operations of Hogmasters. Again, the absence of such evidence is not a circumstance proved. *See id.*

unverified number and could have sent those texts.” Her does not specify what evidence or circumstance proved would allow such an inference.

To prevail at the final step of the circumstantial-evidence analysis, an appellant “must . . . point to *evidence in the record* that is consistent with a rational theory other than guilt.” *State v. Segura*, 2 N.W.3d 142, 158 (Minn. 2024) (emphasis added) (quotation omitted). An appellant “may not rely on mere conjecture to argue that the circumstances proved, as a whole, are consistent with a reasonable hypothesis of [his] innocence.” *Id.* (quotation omitted). Our review of the record indicates that there was no evidence that any person other than Her had access to the telephone associated with (612) xxx-xx53. Because Her’s only alternative hypothesis is based solely on conjecture, not evidence introduced at trial, the hypothesis is not rational.

Thus, the circumstantial evidence is sufficient to prove beyond a reasonable doubt that Her sent the eight text messages to J.R. on August 10, 2024. Therefore, the evidence is sufficient to support Her’s conviction of violating an OFP.

**Affirmed.**