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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1855**

State of Minnesota,
Respondent,

vs.

Andrew Josef Brenner,
Appellant.

**Filed July 6, 2026
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-23-359

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

Adrian S. LaFavor-Montez, Colich & Associates, Minneapolis, Minnesota (for respondent)

David J. Risk, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Bentley,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant argues that his conviction for gross-misdemeanor harassment should be reversed because: (1) the harassment statute is unconstitutional as applied to him, (2) the district court abused its discretion when instructing the jury, (3) the

evidence was insufficient to sustain the jury's finding of guilt, and (4) the district court made evidentiary errors. We affirm.

FACTS

Respondent State of Minnesota charged appellant Andrew Josef Brenner with gross-misdemeanor harassment under Minnesota Statutes section 609.749, subdivision 2(b)(3) (2022). The charge arose after Brenner mailed letters accusing his former romantic partner, J.M., of giving him a sexually transmitted disease (STD). The following facts are drawn from the evidence and testimony presented at the jury trial, framed in the light most favorable to the verdict.¹

Brenner and J.M. began dating in the summer of 2021. They had a sexual relationship and engaged in both protected and unprotected sex. Brenner visited a doctor after their relationship began and tested positive for HSV-1. Brenner and J.M. ended their relationship later that year after Brenner accused J.M. of giving him an STD. She denied doing so, telling him she did not have any symptoms. Brenner suffers from kidney disease, which worsened due to the STD.

In May 2022, Brenner called the St. Louis Park Police Department to report that J.M. committed sexual assault by giving him an STD. Officer S.A., a patrol officer, responded to Brenner's call. Officer S.A. talked with Brenner, who provided details about his relationship with J.M. and his reasons for believing that he contracted the STD from J.M. He also provided Officer S.A. with a document containing information about J.M.

¹ See *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026).

including where she lived, her past boyfriends, and her doctors. Officer S.A. then talked separately with J.M., who appeared to be shocked by Brenner's report and denied that she had that STD. Officer S.A. advised J.M. to get tested and told her that the case would be transferred to the investigations unit.

In August 2022, the case was assigned to Officer M.M. to investigate. Officer M.M. contacted Brenner and spoke at length with him. Brenner told Officer M.M. about the basis for his report, and Officer M.M. explained to Brenner how he planned to investigate the matter. He also told Brenner that he would be on a work trip for about a week and that he would follow up when he returned. And he told Brenner that he hoped to do some work on the matter while he was gone, including drafting a search warrant to request J.M.'s medical records.

In late August 2022, before Officer M.M. returned from his work trip, Brenner sent letters to residents at J.M.'s former apartment building. Brenner also sent a letter to the leasing office in August 2022. The letters accused J.M. of spreading "a dangerous disease" and included J.M.'s name and picture. The letters asked the residents for "help finding information pertaining to" J.M. The letters further stated, "We are looking to find out and make contact with anyone who knew her. Especially any of her male or female relationships." The letters asked residents to text "Max" at a designated phone number and included a St. Louis Park Police Department case number. Two of the residents shared the letter with the property manager, who found them "alarm[ing]."

In addition to sending letters to residents of the apartment building, Brenner sent letters to J.M.'s ex-boyfriends. The letter was signed as "Person Doe." A letter sent to one

ex-boyfriend accused J.M. of “caus[ing] a lot of pain in this world” and “spreading a serious disease.” Brenner also sent “subpoenas” to multiple parties and businesses attempting to discover additional information about J.M.

After the letters were sent, people who had received them began contacting J.M. Residents and an employee from J.M.’s former apartment building contacted her to report that letters with her picture were “going around” the building. She also received calls from at least five of her ex-boyfriends who got letters from Brenner. J.M. estimated that in the beginning, she was contacted “[a]lmost weekly” by people as they received Brenner’s letters. And J.M. learned that Brenner had hired a private investigator who contacted her mother, brother, former roommates, and friends.

After learning about the letters, J.M. contacted the police. J.M. estimated that she called the police 20 to 30 times “any time something would happen.” According to J.M., Brenner’s conduct was “nerve-wracking and emotional” for her. J.M. previously “had a drinking problem” and used drugs in 2021 including during her relationship with Brenner. She participated in outpatient treatment in Ohio in the summer of 2022, before Brenner sent the letters, and did fairly well managing her sobriety at that time. But she testified that learning about the letters caused her to begin using substances again. J.M. also struggled with depression, had difficulty concentrating at work, and was afraid to leave her home. In 2023, a district court granted J.M. an order for protection against Brenner.

In mid-September 2022, Officer M.M. spoke with Brenner, who admitted to circulating the letters. The officer warned Brenner that his actions were “considered harassing” and that he should stop. Officer M.M. also “made [it] clear” to Brenner that

Brenner's mailing of the letters would make it much more difficult for police to obtain a warrant for J.M.'s medical records. Brenner agreed to stop sending letters.

Officer M.M. continued to investigate Brenner's allegations. But, in late September, notified Brenner that the police department was ending its investigation of J.M. because the officer believed it was "highly unlikely" that the state would be able to prove the elements of the alleged offense.

In early October 2022, Brenner sent "a second wave of letters" to residents of the apartment building. The letters were not identical to the first set. These letters stated that J.M. "[was] a serial predator" and was possibly "committing sexual assault." The letters encouraged anyone who had a relationship with J.M. to text a phone number to "prevent[] people like this [from] destroying people's lives." Police later learned from J.M. that Brenner had sent these additional letters. In total, Brenner sent letters to about 170 people between August and October 2022.

The state subsequently charged Brenner with gross-misdemeanor harassment under Minnesota Statutes section 609.749, subdivision 2(b)(3), for repeatedly mailing letters with the intent to harass or intimidate J.M. in a manner that caused or would reasonably be expected to cause substantial emotional distress. The jury found Brenner guilty of harassment and the district court sentenced him to 364 days in jail, stayed for two years.

Brenner appeals.

DECISION

Brenner challenges his conviction for gross-misdemeanor harassment under Minnesota Statutes section 609.749, subdivision 2(b)(3), which provides, "A person who

commits any of the acts listed in paragraph (c) is guilty of a gross misdemeanor if the person, *with the intent to . . . injure, harass, or intimidate another person: . . . causes or would reasonably be expected to cause substantial emotional distress to the other person.*” Minn. Stat. § 609.749, subd. 2(b)(3) (emphasis added). Paragraph (c) states in relevant part: “A person commits harassment under this section if the person . . . repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters . . . , messages . . . , or any communication made through any available technologies or other objects.” *Id.*, subd. 2(c)(6) (2022).

Brenner raises four arguments on appeal. First, he contends that section 609.749, subdivision 2(b) (2022), is unconstitutional as applied to him because it violates his First Amendment rights. Second, he argues the district court abused its discretion in instructing the jury. Third, Brenner challenges the sufficiency of the evidence supporting his conviction. Fourth, he argues that certain evidentiary rulings by the district court constitute an abuse of discretion. We address each argument and discern no basis for reversal.

I. Brenner’s conviction for harassment under Minnesota Statutes section 609.749, subdivision 2(b)(3), is not unconstitutional as applied to him.

Brenner argues that his conviction for criminal harassment under Minnesota Statutes section 609.749 is unconstitutional as applied because his conduct of repeatedly sending letters constitutes speech that is protected by the First Amendment. “Generally, Minnesota Statutes are presumed constitutional, but statutes allegedly restricting First Amendment rights are not so presumed.” *State v. Peterson*, 936 N.W.2d 912, 917 (Minn. App. 2019) (quotation omitted), *rev. denied* (Minn. Feb. 26, 2020). An appellate court

reviews the constitutionality of a statute de novo. *State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006). “When an appellant brings an as-applied challenge, review of the statute is limited to whether the statute impermissibly burdens the appellant’s right based on the facts presented by the case at hand.” *State v. Jones*, 25 N.W.3d 732, 736 (Minn. App. 2025); *see also McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (distinguishing between facial and as-applied challenges). Based on our de novo review, we conclude that Brenner’s as-applied challenge to section 609.749 on First Amendment grounds is unavailing.

The First Amendment to the United States Constitution provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. The First Amendment applies to states through the Fourteenth Amendment. *State v. Washington-Davis*, 881 N.W.2d 531, 538 (Minn. 2016). “First Amendment protections are not limitless.” *Matter of Welfare of A.J.B.*, 929 N.W.2d 840, 846 (Minn. 2019). Certain categories of speech are “of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382-83 (1992) (quotation omitted). And “the First Amendment does not guarantee the right to communicate one’s views at all times and places or in any manner that may be desired.” *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). Moreover, “[t]here is no constitutional privilege to assault or harass an individual or to invade another’s personal space.” *Welsh v. Johnson*, 508 N.W.2d 212, 215 (Minn. App. 1993) (quoting *New York State Nat’l Org. for Women v. Terry*, 886 F.2d 1339, 1343 (2d Cir. 1989) (holding that

limits may be placed on an individual's actions when those acts are committed with the intent to harass).

Here, Brenner argues that Minnesota's harassment statute is unconstitutional as applied to him for three reasons. First, he claims that his conviction for criminal harassment violates the First Amendment because the letters addressed a matter of public concern. Second, he argues that his conviction is unconstitutional because the harassment statute "criminalizes protected speech without proof of a subjective intent to threaten." Third, he contends that the statute "as applied is unconstitutionally overbroad." We address each argument.

Public Concern

Brenner contends that section 609.749, subdivision 2 (2022), which makes it a crime to "repeatedly mail[] letters" if the person does so "with the intent to . . . harass[] or intimidate another person," violates the First Amendment as applied to him because the letters that he mailed address a matter of public concern. *See* Minn. Stat. § 609.748, subd. 2(b)(3), (c)(6). Specifically, he contends that the letters raised a matter of public concern because the letters issued "a public health warning and a request for information regarding criminal activity." Assuming without deciding that the letters addressed a matter of public concern, the caselaw cited by Brenner does not support his argument.

Brenner cites *Snyder v. Phelps*, 562 U.S. 443 (2011) and *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985). Both cases are inapposite. *Snyder* involved a tort action against protesters who were picketing with signs near a soldier's funeral. 562 U.S. at 451, 454. The action was brought by the family of the dead soldier.

Id. at 449-50. The United States Supreme Court addressed whether the protesters’ speech was entitled to protection under the First Amendment because the speech involved a matter of public concern. *Id.* The Court concluded that the speech was a matter of public concern and was entitled to protection under the First Amendment, but the Court also emphasized that “the reach of [the] opinion here is limited by the particular facts.” *Id.* at 460.

The second case relied on by Brenner, *Dun & Bradstreet*, also involved a tort claim. 472 U.S. at 749. In that case, the Supreme Court explained that the level of proof required to prevail on a defamation claim varies depending on whether the speech involves a matter of public concern or a matter of purely private concern. *Id.* at 755-62 (requiring a showing of actual malice to prevail on a claim for speech involving a matter of public concern). Neither *Snyder* nor *Dun & Bradstreet* address the application of the public-concern doctrine to a criminal statute. And Brenner cites no caselaw, nor are we aware of any caselaw, that holds the legislature’s criminalization of the repeated mailing of letters with intent to harass or intimidate another under section 609.749 amounts to a *per se* impermissible restriction on speech when the mailed letters involve a matter of public concern.

Importantly, the provision of section 609.749 at issue here is limited in its application to “repeated[] mail[ings]” when the person has an “intent to . . . harass[] or intimidate.” Minn. Stat. § 609.749, subd. 2(b), (c)(6). The statute does not prohibit Brenner from expressing his views or seeking information about J.M. through other means, so long as these communications are not done both repeatedly and with an intent to harass. *Id.* Because section 609.749, subdivision 2(b)(3), does not restrict the content of Brenner’s

speech, but only prohibits him from engaging in the intentional harassment of J.M., we conclude that the statute is not unconstitutional as applied to Brenner.

Mens Rea

“[A]ssuming *arguendo* that [his] speech was not fully protected as a matter of public concern,” Brenner next argues that his “conviction must be vacated because the district court failed to require proof of the necessary subjective mental state mandated by the United States Supreme Court in *Counterman v. Colorado*, 600 U.S. 66 (2023).” This argument is unavailing for two reasons. First, *Counterman* addressed the mens rea required for a “true threats” statute, not the mens rea required for a criminal harassment statute like the one at issue in this case. *Counterman*, 600 U.S. at 78-83. “True threats” statutes make it a crime to threaten, either directly or indirectly, any crime of violence with the purpose of terrorizing another. *See, e.g.*, Minn. Stat. § 609.713 (2022) (threats of violence); *see also Virginia v. Black*, 538 U.S. 343, 359 (2003) (“‘True threats’ . . . encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” (citation omitted)). Criminal harassment, on the other hand, involves a broader pattern of conduct—conduct that causes or would reasonably be expected to cause substantial emotional distress to a victim or fear, even without an explicit declaration of violent intent. *See* Minn. Stat. § 609.749, subd. 2(b) (harassment; stalking). Because *Counterman* limited its analysis to true-threats statutes, Brenner’s reliance on *Counterman* is misplaced.

Brenner’s argument is also unavailing because section 609.749, subdivision 2(b)(3), includes a mens rea requirement—specific intent—and the district court instructed the jury

on the mens rea requirement. *See id.*, subd. 2(b)(3) (requiring proof that the person commits the act in question with “intent to . . . harass[] or intimidate another person”). Furthermore, the specific-intent mens rea included in section 609.749 is more demanding than the mens rea approved of in *Counterman*. In *Counterman*, the United States Supreme Court concluded that the mens rea required to satisfy the First Amendment in a true-threats case is the “recklessness” standard. 600 U.S. at 81-82. The Supreme Court noted that the recklessness standard is not as demanding as the two other well-known mens rea standards: “knowing” and “purposeful.” *Id.* at 79-82. And the mens rea of “purposeful” is equivalent to the mens rea of “intentional” or “intent” included in section 609.749, subd. 2(b). *See State v. Wilson*, 830 N.W.2d 849, 853-54 (Minn. 2013) (noting that “[t]he word ‘purpose’ is synonymous with ‘intention’ and is defined as the ‘result’ or an effect that is intended or desired” (quotation omitted)). Here, the record reflects that the district court instructed the jury that, to find Brenner guilty of criminal harassment, the jury was required to find beyond a reasonable doubt that Brenner intended to harass J.M. within the meaning of the statute. We therefore reject Brenner’s argument that he was convicted without proof of a subjective mens rea.

Overbroad

Lastly, Brenner argues that section 609.749 is unconstitutionally overbroad “as applied to him.” Brenner does not include any argument setting forth the legal standard for deciding when a statute is overbroad as applied. Before the district court, Brenner made a detailed argument that section 609.749 is unconstitutionally overbroad, relying on *A.J.B.*, 929 N.W.2d at 840. The district court rejected the argument. Brenner does not make a

similar argument on appeal. Because Brenner has not provided any legal support for his claim that section 609.749 is overbroad as applied to him, we consider this argument forfeited. *See State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016) (stating that an issue is forfeited when it is “not adequately argued or explained”).

In sum, Brenner’s as-applied challenge to his conviction on First Amendment grounds does not warrant reversal.

II. The district court did not abuse its discretion in instructing the jury.

Brenner next argues that the district court abused its discretion by using the model jury instructions to instruct the jury, rather than more detailed instructions proposed by the defense. We are not persuaded.

District courts have “considerable latitude” in selecting the exact language of jury instructions. *Gulbertson v. State*, 843 N.W.2d 240, 247 (Minn. 2014). Model jury instructions serve as a resource for district courts in crafting jury instructions. *State v. Kelley*, 734 N.W.2d 689, 695 (Minn. App. 2007), *rev. denied* (Minn. Sept. 18, 2007); *see also* 10 *Minnesota Practice*, CRIMJIG 15.11 (2024) (setting forth the model jury instructions for harassment). “[Appellate courts] review the district court’s jury instructions for abuse of discretion.” *State v. Segura*, 2 N.W.3d 142, 166 (Minn. 2024). “A district court abuses its discretion if the challenged instruction confuses, misleads, or materially misstates the law.” *Id.* (quoting *State v. Guzman*, 892 N.W.2d 801, 816 (Minn. 2017)). Appellate courts “review the jury instructions as a whole to determine whether they fairly and adequately explain the law.” *State v. Huber*, 877 N.W.2d 519, 522

(Minn. 2016). “[A] mistaken jury instruction does not require a new trial if the error was harmless.” *Segura*, 2 N.W.3d at 166 (quotation omitted).

Prior to trial, Brenner filed a motion requesting that the district court include language in the jury instructions specifying that Brenner “has a constitutional right to freedom of speech under the first amendment.” The district court denied Brenner’s motion and instead used the model jury instructions for section 609.749. The district court instructed the jury that “[u]nder Minnesota law, whoever with the intent to kill, injure, harass, or intimidate another person repeatedly mails or delivers or causes delivery by any means . . . and thereby places the other person in reasonable fear of substantial bodily harm” engages in harassment within the scope of section 609.749. The district court also instructed the jury on the individual elements of harassment under section 609.749. The district court stated that the elements are: (1) Brenner “repeatedly mailed or delivered” letters; (2) Brenner “acted with the intent to kill, injure, harass, or intimidate” J.M.; (3) Brenner “caused or would reasonably be expected to cause” substantial emotional distress to J.M. by his conduct; and (4) Brenner mailed the letters in Hennepin County “on or about August 31st, 2022, to November 30th, 2022.” The jury instructions provided by the district court mirror the statutory language for the charged offense. *See* Minn. Stat. § 609.749, subd. 2(b)(3), (c)(6). Viewing the jury instructions as a whole, we are satisfied that the district court “fairly and adequately explain[ed] the law” on the elements of the offense to the jury. *See Gulbertson*, 843 N.W.2d at 247.

Brenner also contends that the district court’s instructions were “defective” because the instructions “applied an unconstitutional negligence standard” and that the district court

should have included a limiting instruction that harassment does not include conduct that is merely “offensive, annoying, or unsettling.” These arguments are unavailing. As stated, the district court’s jury instructions followed the law as articulated in section 609.749, subdivision 2(b)(3). The district court did not misstate the law or omit any elements of the offense. *See State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016) (“[J]ury instructions must fairly and adequately explain the law of the case and not materially misstate the law.”). Nor did the district court apply “an unconstitutional negligence standard.” Rather, the instructions included the specific-intent element from the statute—acted “with the *intent* to kill, injure, harass, or intimidate.” Minn. Stat. § 609.749, subd. 2(b) (emphasis added). And, because the district court fairly and adequately explained the law by using the model jury instructions, the district court was not required to include the limiting instruction proposed by Brenner. *See Gulbertson*, 843 N.W.2d at 247. We therefore discern no abuse of the district court’s wide discretion in instructing the jury.

III. Brenner’s conviction is supported by sufficient evidence.

We next consider Brenner’s challenge to the sufficiency of the evidence underlying his conviction. The Due Process Clauses of the United States and Minnesota Constitutions require the state to prove each element of an offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023); *see* U.S. Const. amend. XIV; Minn. Const. art. I, § 7.

When considering a challenge to the sufficiency of the evidence, an appellate court conducts “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to

reach the verdict which they did.” *State v. Hallmark*, 927 N.W.2d 281, 301 (Minn. 2019) (quotation omitted). The standard of review for evaluating the sufficiency of the evidence varies based on whether direct or circumstantial evidence supports the elements of the conviction. *State v. Jones*, 4 N.W.3d 495, 500-01 (Minn. 2024). “Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* at 501 (quotations omitted). Circumstantial evidence, by contrast, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotations omitted). As such, “circumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* (quotation omitted).

“[W]hen a disputed element of the offense is proven by circumstantial evidence, a heightened two-step analysis standard of review applies.” *Id.* at 500. Under the first step of the circumstantial-evidence standard, we identify the circumstances proved. *Firkus*, 31 N.W.3d at 479. In doing so, we “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.” *Id.* at 478 (quotations omitted). We defer to the fact-finder’s evaluation of the credibility of the evidence presented, and we will not reweigh the evidence. *Id.* Identifying the circumstances proved in this manner “protects the well-established legal principle that the jury 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, “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 483. At this stage, “we do not defer to the factfinder but examine the reasonableness of the inferences ourselves.” *Id.* “If the circumstances proved[,] when viewed as a whole, support a reasonable inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and we must reverse.” *Id.* (quotations omitted).

With this framework in mind, we turn to Brenner’s specific arguments. Brenner was convicted of gross-misdemeanor harassment under section 609.749. As stated, to convict Brenner of this offense, the state was required to prove beyond a reasonable doubt that Brenner repeatedly mailed or delivered letters or messages “with the intent to . . . harass[] or intimidate” J.M., and this conduct “cause[d] or would reasonably be expected to cause substantial emotional distress” to J.M. Minn. Stat. § 609.749, subd. 2(b)(3), (c)(6). Brenner challenges the sufficiency of the evidence for two elements: (1) intent, and (2) whether his conduct “cause[d] or would reasonably be expected to cause substantial emotional distress” to J.M. He does not contend that the evidence was insufficient to prove that he repeatedly mailed letters within the meaning of the statute.²

² We note that Brenner does not challenge his conviction on the basis that he sent the letters to third parties, rather than directly to J.M. We do not consider issues that are not raised on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Therefore, we do not address

We begin by addressing the element of intent and then address the element of substantial emotional distress. We conclude that there is sufficient evidence to prove each element beyond a reasonable doubt.

A. The evidence is sufficient to support the element of intent.

Because the state relied on circumstantial evidence to prove Brenner’s intent, we apply the circumstantial-evidence standard to determine whether the evidence was sufficient to prove the element of intent. *See State v. Lampkin*, 994 N.W.2d 280, 291 (Minn. 2023) (“Intent is generally proven by circumstantial evidence.”). We first identify the relevant circumstances proved regarding intent and then consider the reasonable inferences that can be drawn from the circumstances proved.

Circumstances Proved

Winnowing down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, we conclude the circumstances proved relevant to the question of Brenner’s intent are as follows. *Firkus*, 31 N.W.3d at 478. Brenner and J.M. were involved in an intimate relationship in 2021. Brenner and J.M. engaged in both protected and unprotected sex. Brenner visited a doctor after their relationship began and tested positive for HSV-1. Brenner and J.M. ended their relationship after Brenner accused J.M. of giving him an STD. She denied doing so, telling him she did not have any symptoms. Brenner suffers from kidney disease, which worsened due to the STD.

whether the legislature intended for the harassment statute to extend to mailings sent to a person other than the intended target of harassment.

Brenner called police in May 2022 to report that J.M. committed sexual assault by giving him an STD. Officer S.A. initially responded to the matter. In August, the case was transferred to Officer M.M. Officer M.M. spoke with Brenner, who told Officer M.M. about the details of his relationship with J.M. and the basis for his report. Officer M.M. explained to Brenner how he planned to investigate the matter. He also informed Brenner that he would be on a work trip for about a week and that he hoped to do some work on the matter while he was gone, including drafting a search warrant to request J.M.'s medical records. Officer M.M. told Brenner that he would be in touch when he returned.

In late August 2022, Brenner sent letters to residents in J.M.'s former apartment building. Brenner also sent a letter to the leasing office. The letters asked for help finding information about J.M., "who may have lived" in the building. The letters stated that "information is urgently needed to prevent the spread of a dangerous disease." The letters included a photo of J.M., as well as a St. Louis Park Police Department case number, and indicated that information could be provided anonymously by texting "Max" at a designated phone number.

Brenner also sent letters to J.M.'s ex-boyfriends about J.M., stating that "[i]t appears she has been spreading a serious disease," indicating that he would like to talk with them, and signed the letters as "Person Doe." People who received the letters, both apartment residents and ex-boyfriends, notified J.M., who then informed police.

In early September, upon returning to Minnesota from his work trip, Officer M.M. learned of Brenner's actions and informed Brenner that his conduct was "considered harassing" and that he should stop. Officer M.M. also told Brenner that his conduct was

hampering the police investigation of J.M. because, as a result of his sending the letters, police would have a more difficult time obtaining a warrant for J.M.'s medical information. In response, Brenner told the officer that he would stop sending letters, but he did not.

Instead, in October 2022, Brenner sent “a second wave of letters” to the apartment building. Like the first set of letters, these letters also asked for information on J.M. “to prevent the spread of a serious disease.” But the letters included additional language, accusing J.M. of being “a serial predator” who was infecting people and was possibly “committing sexual assault.” Brenner sent letters to about 170 people total between August and October 2022.

Reasonable Inferences

Having identified the circumstances proved relevant to the question of intent, we next “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.” *Firkus*, 31 N.W.3d at 483. Viewed as a whole, we conclude there is a reasonable inference from the circumstances proved that Brenner intended to harass or intimidate J.M. within the meaning of section 609.749 by repeatedly sending letters accusing her of “spread[ing] . . . a dangerous disease” and of “being a serial predator.” Brenner sent approximately 170 letters between August and October 2022 to people in her apartment building and her former boyfriends. Notably, Brenner also sent letters indiscriminately to people who had no prior history with J.M., including residents of her former apartment building and the leasing office. It is reasonable to infer from these

circumstances proved that Brenner intended to harass or intimidate J.M. In his brief, Brenner does not argue otherwise.

Instead, Brenner contends that there is another rational hypothesis—that he was “merely conducting a good-faith investigation.” In support of this argument, he relies on his trial testimony that his primary intent was not to harass but to conduct his own investigation of what he believed was a crime committed by J.M. As an initial matter, we note that the jury rejected this testimony regarding his intent when it found him guilty. Therefore, his claimed intent is not a circumstance proved that we consider in analyzing whether his alternative hypothesis is rational. *Id.* at 479 (recognizing that “the jury is in the best position to evaluate the credibility of evidence, even in cases based on circumstantial evidence” (quotation omitted)). And Brenner does not argue that the circumstances proved—those established by a winnowing of the evidence at trial in favor of the jury’s verdict—support his alternative hypothesis. We nonetheless consider the question and conclude they do not. Given the number of letters sent, along with the fact that Brenner sent letters indiscriminately to people who had no prior history with J.M. and the fact that he sent a second wave of letters after he told police that he would stop sending letters, we conclude Brenner’s alternative hypothesis that he was simply conducting an investigation in good faith and did not intend to harass J.M. is not rational. Consequently, the circumstances proved, taken as a whole, support only one reasonable inference: that Brenner intended to harass or intimidate J.M. within the meaning of section 609.749 by repeatedly mailing letters accusing J.M. of spreading a disease and of being a serial predator.

B. The evidence is sufficient to support the element of substantial emotional distress.

Brenner next argues that the evidence was insufficient to satisfy the substantial-emotional-distress element. Under section 609.749, subdivision 2(b)(3), the state was required to prove not only that Brenner intended to harass or intimidate J.M. but also that his conduct “cause[d] or would reasonably be expected to cause substantial emotional distress to” her. Minn. Stat. § 609.749, subd. 2(b)(3). “[S]ubstantial emotional distress’ means mental distress, mental suffering, or mental anguish,” which may be shown by the victim “seeking psychotherapy . . . losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.” *Id.*, subd. 2(a)(4) (2022); *see also* Minn. Stat. § 604.20, subd. 6 (2022) (defining “psychotherapy” as “the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition”).

The state offered direct evidence in the form of J.M.’s testimony to prove the element of substantial emotional distress. Brenner does not dispute that J.M.’s testimony constitutes direct evidence. Accordingly, we apply the traditional standard of review. Under this standard, reviewing courts “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 will not overturn the verdict if the jury, acting with regard for the

presumption of innocence and the [s]tate's burden of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty." *State v. Jones*, 4 N.W.3d at 502.

When viewed in the light most favorable to the verdict, we conclude that J.M.'s testimony is sufficient for the jury to conclude beyond a reasonable doubt that Brenner's conduct of repeatedly mailing letters caused substantial emotional distress to J.M. We base our conclusion on the following testimony. At trial, J.M. testified that, after Brenner sent the letters, she began receiving phone calls from people who lived at her former apartment building. Additionally, about five of J.M.'s ex-boyfriends contacted J.M. to say that they received letters. J.M. estimated that, at the beginning, she was contacted "[a]most weekly" by someone who received one of Brenner's letters. J.M. stated that Brenner's conduct "was very nerve-wracking and emotional" and affected her sobriety. J.M. previously "had a drinking problem" and used drugs in 2021, including during her relationship with Brenner. J.M. participated in outpatient treatment in Ohio in the summer of 2022 and did fairly well maintaining her sobriety during that summer. But, after learning about the letters that Brenner started sending in late August, J.M. struggled. According to J.M., learning about the letters and explaining the letters to her family and friends "made [J.M.'s] depression worse and [her] substance abuse increase again." J.M. sought therapy numerous times between 2022 and 2024 to address her sobriety. J.M. also missed "[a] lot" of work after learning about the letters. She was not able to concentrate and was crying at work. And J.M. was afraid to leave her house and feared she would be harmed by Brenner. Taken as a whole, J.M.'s testimony establishes that Brenner's conduct caused J.M. to experience substantial emotional distress. *See* Minn. Stat. § 609.749, subd. 2(a)(4) (defining

substantial emotional distress to mean “mental distress, mental suffering, or mental anguish”).

Moreover, although “a conviction can rest on the uncorroborated testimony of a single credible witness,” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted), corroborating evidence supports J.M.’s testimony. For example, in 2023, a district court granted J.M. an order for protection against Brenner. And, although Brenner challenges J.M.’s credibility and argues that there were alternative reasons for her mental distress—such as her own struggles with chemical dependency—the jury’s verdict indicates that it found J.M. credible. We defer to that credibility determination. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) (stating that appellate courts cannot reweigh the trial evidence).

We likewise reject Brenner’s contention that the state was required to prove that J.M. was terrified to the point of having to move from her home. The definition of “substantial emotional distress” does not include such a requirement. Minn. Stat. § 609.749, subd. 2(a)(4). Accordingly, we conclude that sufficient direct evidence supports the jury’s finding that J.M. suffered substantial emotional distress.

In sum, applying the relevant standards that govern our review, we conclude that the evidence is sufficient to support the jury’s verdict of guilt.

IV. The district court did not abuse its discretion in its evidentiary rulings.

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). “A 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.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). The appellant has the burden of establishing that the district court abused its discretion and that the appellant was thereby prejudiced. *Amos*, 658 N.W.2d at 203.

Brenner argues that the district court abused its discretion with regard to two evidentiary rulings: (1) excluding evidence of text messages between Brenner and J.M., and (2) excluding testimony from Brenner’s proposed expert witness. We address each issue in turn and discern no basis for reversal.

Text Messages

Before trial, Brenner noted that he intended to place into evidence text messages between himself and J.M. Brenner claimed these text messages showed that Brenner and J.M. were in “an exclusive sexual relationship” and that J.M. told him that she had been tested for HSV-1 and did not have the STD. The state moved to exclude the text messages on the basis that the text messages constituted impermissible hearsay, and the district court granted the state’s request.

Brenner argues that the district court abused its discretion by excluding this evidence because he was not seeking to offer the evidence for the truth of the matter asserted but rather to explain why he believed a crime had been committed against him and to demonstrate that he did not have an intent to harass J.M. Brenner claims that J.M. told him in text messages that she did not have any STDs and was in an exclusive sexual relationship with him. And he claims that he relied on these representations when he began a sexual relationship with her. Brenner asserts that the text messages explained his

subsequent actions—including sending letters and hiring a private investigator—because he was motivated by an intent to gather evidence of J.M.’s deception. The state responds that Brenner failed to raise this argument before the district court and raises it for the first time on appeal. Further, the state argues that Brenner was not prejudiced by the exclusion of the evidence because Brenner testified directly about his conversations with J.M. and the effect that the HSV-1 diagnosis had on him.

Based on our review of the transcript from the hearing on the motions in limine, we disagree with the state that Brenner did not raise this argument before the district court. The transcript reflects that he did raise the argument. But, even assuming the district court abused its discretion by excluding the text messages, we agree with the state that Brenner was not prejudiced as a result of the exclusion.

As noted, Brenner has the burden on appeal to establish that he was prejudiced by the exclusion of evidence. *Amos*, 658 N.W.2d at 203. “Even if an objection was made and a district court abused its discretion, [appellate courts] reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). “An error in excluding evidence is harmless only if the reviewing court is satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a reasonable jury would have reached the same verdict.” *State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Feb. 27, 2013). Thus, “[i]f the verdict actually rendered was surely unattributable to the error, the error is harmless beyond a reasonable doubt.” *State v. Blom*, 682 N.W.2d 578, 622 (Minn. 2004) (quotation omitted).

Here, based on our careful review of the record, we are satisfied that introduction of the text messages between Brenner and J.M. would not have altered the jury's verdict because the text messages were cumulative of other evidence and there was strong evidence of Brenner's guilt. At trial, Brenner testified that he believed he was in an exclusive relationship with J.M. In addition, Brenner testified that he discussed STDs "[e]arly on in [the] relationship," and spoke with J.M. specifically about HSV-1 "about a month into [the relationship]." Brenner also stated he asked J.M. to provide him with tests and that she "swore" she did not have HSV-1. Moreover, there was strong evidence of Brenner's guilt, including his own testimony that he sent letters to approximately 170 people including people with no prior history with J.M. Given the record, the exclusion of the text messages was harmless beyond a reasonable doubt and did not prejudice Brenner's right to a fair trial.

Expert Witness Testimony

Brenner also argues that the district court abused its discretion by excluding the testimony of his proposed expert witness at trial. Brenner sought to call an expert witness to testify about HSV-1 and explain that it was "more likely than not" that Brenner acquired HSV-1 from his sexual encounters with J.M. The state filed a motion in limine to exclude the expert's testimony and the district court granted the state's motion.

The decision to admit expert testimony rests within the district court's discretion. *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). Expert testimony may be admitted if it helps the jury to understand the evidence or determine a fact at issue. Minn. R. Evid. 702. Here, Brenner intended to offer testimony from an expert witness regarding "the nature,

extent, severity, and permanency” of the STD. But because Brenner’s STD diagnosis was not a fact at issue in this criminal harassment trial, we discern no abuse of discretion in the district court’s decision to exclude it. *See id.*

In sum, Brenner has not demonstrated a basis to reverse the district court’s decision to exclude the text messages between Brenner and J.M. or his proposed expert testimony.

Affirmed.