STATE OF MINNESOTA
IN COURT OF APPEALS
A10-647

State of Minnesota,
Respondent,

vs.

Scott Wade Ramey,
Appellant.

Filed March 15, 2011
Affirmed
Larkin, Judge

Freeborn County District Court
File No. 24-CR-09-1222

Lori A. Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Craig S. Nelson, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Crippen, Judge.[*]

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

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges his conviction of felony violation of a harassment restraining order (HRO). Appellant argues that the district court erred by denying his motion to dismiss the underlying charge on double-jeopardy grounds. Appellant also argues that the evidence was insufficient to sustain the verdict. We affirm.

FACTS

R.P. obtained an HRO against appellant Scott Wade Ramey on July 8, 2008. The express terms of the HRO prohibited any contact, direct or indirect, between Ramey and R.P. until July 7, 2010. Ramey was subsequently charged with one count of felony violation of an HRO under Minn. Stat. § 609.748, subd. 6(a), (d) (2008). The single-count complaint was based on four allegations of impermissible contact: visits between Ramey and R.P. at the Freeborn County Adult Detention Center, where Ramey was incarcerated, on March 10, April 16, and April 30, 2009, and a letter sent from Ramey to R.P. on or about May 26, 2009.

Prior to trial, Ramey[1] moved the district court to limit the state's evidence of the alleged HRO violations to the four contacts described in the complaint. Ramey informed the district court that he would ask for a mistrial if R.P. testified about any allegations of contact other than those described in the complaint. The district court directed the

[1] Ramey was represented by counsel at all times during trial. References to "Ramey" include reference to his defense attorney.

prosecutor to inform R.P. not to testify about any alleged contacts with Ramey other than the four contacts described in the complaint.

Ramey made three express mistrial requests during the ensuing jury trial. Ramey first requested a mistrial during voir dire, when a venire member made offensive racist and sexist comments. The district court denied this motion. Ramey's second mistrial request came in response to R.P.'s testimony that she had received "letters" from Ramey, as opposed to the one letter referenced in the complaint. The district court denied Ramey's request for a mistrial but cautioned the prosecutor to proceed carefully.

Ramey's third mistrial request was in response to the testimony of R.P.'s adult daughter, D.H. Approximately 45 minutes before she testified, D.H. delivered a sealed envelope to the prosecutor, which appeared to contain the original letter described in the complaint. The district court had previously received a copy of the letter into evidence. Ramey objected to the admission of the original letter, because the prosecutor was a witness in the chain of custody. During the discussion that followed, the prosecutor raised the possibility that the sealed envelope might not contain the original letter described in the complaint, but rather another letter from Ramey to R.P. In response, Ramey requested a mistrial.

The district court granted a short recess so the prosecutor could open the envelope and examine its contents. The examination revealed that the letter in the envelope was not the original May 26, 2009 letter referenced in the complaint—it was another letter postmarked April 27, 2009. Ramey objected to the introduction of the April 27 letter into evidence because it was not identified in the complaint, and the prosecutor moved to

amend the complaint to include a second count of violating the HRO based on the newly discovered letter. Ramey did not respond to the motion to amend, other than to note that the amendment would add a completely new allegation of contact.

The district court granted the motion to amend, but accepted Ramey's representation that the defense could not proceed with trial that day because it had just learned of the April 27 letter. The district court considered a continuance to allow the defense to prepare but ultimately decided against it because some of the jurors were not available for service beyond that day. Instead, the district court suggested a mistrial. After providing Ramey with an opportunity to make a record, which he declined, the district court granted a mistrial.

After the mistrial, the state filed an amended single-count complaint. In addition to the original four contacts, the complaint references the newly disclosed letter and three or four letters sent from Ramey to R.P., via D.H., on or about March 9 or 10, 2009. Ramey moved to dismiss the amended complaint on double-jeopardy grounds. The district court determined that the prohibition against double jeopardy did not prohibit Ramey's retrial because he had repeatedly requested a mistrial during the first trial and the state had not provoked the mistrial. The district court also determined, in the alternative, that even if the mistrial had been declared without Ramey's consent, retrial was permitted because there was a "'manifest necessity' for the mistrial."

At the second trial, Ramey stipulated that he was served with the HRO, which was to remain in effect until July 7, 2010. R.P. and D.H. testified regarding multiple letters that they had received from Ramey, which were all addressed to R.P., between July 2008

and April 2009. R.P. testified that she visited Ramey at the adult detention center three times during March and April 2009, and that she never discussed the restraining order with jail staff or Ramey during the visits. Ramey did not testify or call any witnesses. During closing argument, Ramey argued that the state failed to prove beyond a reasonable doubt that he knowingly violated the restraining order. Ramey argued that because the jail allowed R.P. to visit him, it was reasonable for him to believe that the order had been dismissed.

The jury found Ramey guilty of violating the HRO. In doing so, it answered a number of special interrogatories regarding the specific contacts that violated the HRO. With the exception of a card that Ramey allegedly sent R.P. in July 2008, the jury found that all of the alleged contacts had been proved beyond a reasonable doubt. The district court imposed the presumptive sentence, an executed prison term of 27 months. This appeal follows.

D E C I S I O N

I.

Ramey first claims that his retrial violated the double-jeopardy provisions of the federal and state constitutions. The United States and Minnesota Constitutions prohibit putting a person in jeopardy twice for the same offense. U.S. Const. amend. V; Minn. Const. art. 1, § 7. "The constitutional prohibition against trying a defendant twice for the same offense is fundamental, a sine qua non of American and Minnesota due process standards." *State v. Olson*, 609 N.W.2d 293, 303 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

Generally, jeopardy attaches once a jury is impaneled. *State v. McDonald*, 298 Minn. 449, 452, 215 N.W.2d 607, 609 (1974). When a mistrial has been declared before a verdict, "the conclusion that jeopardy has attached begins, rather than ends, the inquiry as to whether the double jeopardy clause bars retrial." *State v. White*, 369 N.W.2d 301, 304 (Minn. App. 1985) (citing *Illinois v. Somerville*, 410 U.S. 458, 467, 93 S. Ct. 1066, 1072 (1973)), *review denied* (Minn. Aug. 20, 1985). Even after the jury is impaneled, the district court may, in some circumstances, abort the proceedings and retry the defendant without violating double jeopardy. *Id.* The standards used to determine whether a defendant may be retried after a trial ends in a mistrial are summarized as follows:

> If a mistrial is declared with the defendant's consent, he is deemed to have waived any double jeopardy claim he might otherwise have. If, on the other hand, the defendant wishes to proceed to a verdict by the jury and the court declares a mistrial over the defendant's objection, the double jeopardy clause will bar retrial unless the mistrial was dictated by "manifest necessity" or the "ends of public justice." The only circumstance in which the defendant's consent to a mistrial does not operate as a waiver of the right to claim double jeopardy is where the prosecutor or the judge intentionally provokes the defendant to request the mistrial.

Id. (citations omitted).

A defendant's consent to a mistrial need not be express but may be implied from the totality of the circumstances. *Id*. Although a failure to object to a mistrial may not, in and of itself, constitute consent, it is a factor to be considered. *Id.* This court reviews double jeopardy issues de novo. *State v. Leroy*, 604 N.W.2d 75, 77 (Minn. 1999). This court reviews a district court's decision to declare a mistrial for an abuse of discretion. *McDonald*, 298 Minn. at 453-54, 215 N.W.2d at 609-10.

Ramey argues that the district court abused its discretion in declaring a mistrial and that retrial violates constitutional double-jeopardy protections because the mistrial was not prompted by a "manifest necessity." *See Olson*, 609 N.W.2d at 300, 302 (stating that when a judge declares a mistrial sua sponte and without the defendant's consent, the double jeopardy clause bars retrial unless there was a "manifest necessity" for the mistrial). But the manifest-necessity standard applies only if Ramey did not consent to the mistrial. Ramey clearly did not object to the mistrial. When the district court invited him to make a record regarding the district court's proposal for a mistrial, he stated, "I'm done." But because Ramey's failure to object is not dispositive, we consider whether his consent may be implied from the totality of the circumstances. *See White*, 369 N.W.2d at 304.

Ramey requested a mistrial three times during the first trial. Two of the requests were based on the state's introduction of evidence regarding contacts other than those described in the complaint, which was one of the reasons for the ultimate mistrial. Moreover, Ramey had informed the district court that he would request a mistrial if R.P. testified regarding any contacts other than those described in the complaint. Even though Ramsey did not renew his request for a mistrial after the district court granted the state's motion to amend the complaint to include the newly disclosed letter, Ramey was invited to make a record of his position regarding a mistrial, and he did not object. The only reasonable conclusion to be drawn from these circumstances is that Ramey implicitly consented to the mistrial. *See id.* (stating that the only reasonable conclusion was that defendant impliedly consented to a mistrial where the record showed that defense counsel

understood that the trial court and prosecutor intended a retrial, defense counsel was given an adequate opportunity to make his position regarding a mistrial known but did not indicate that he wished to proceed with trial, and defense counsel's responses appeared calculated to encourage the trial court to grant a mistrial without expressly consenting).

Because Ramey consented to the mistrial, his arguments regarding the manifest-necessity standard are misplaced.[2] Ramey's consent operates as a waiver of his right to claim double-jeopardy protection unless the prosecutor or judge intentionally provoked the mistrial. *See id.* But Ramey does not argue that the state provoked the mistrial. In fact, Ramey concedes that the state "was surprised when [D.H.] provided a letter during direct examination" and asserts that the mistrial was caused by the "inaction" of the state, noting that "[i]f the state had prepared its witness better for trial, the witness would not have taken the stand with a new piece of evidence in her hand." On this record, there is no basis to conclude that the state's request to amend the complaint to include the newly discovered letter was an effort to provoke a mistrial. *See State v. Fuller*, 374 N.W.2d 722, 723 (Minn. 1985) ("Double jeopardy clause of Minnesota Constitution does not bar retrial of [a] criminal defendant who . . . obtained [a] mistrial following unintentional—at worst, negligent—elicitation of inadmissible evidence by prosecutor."). Thus, the district court correctly found that "there were no intentional acts by the State or the Court which

[2] Because the manifest-necessity standard is inapplicable, we do not review the district court's alternative conclusion that the standard was satisfied here.

provoked [the] mistrial." *See id.* at 726 (reviewing the trial court's finding that the prosecutor did not willfully or intentionally elicit inadmissible evidence for clear error).

In summary, because Ramey consented to the mistrial and the mistrial was not provoked by the state, the district court did not abuse its discretion by declaring a mistrial and Ramey's retrial was not barred on the double-jeopardy grounds.

II.

Ramey next claims that the evidence is insufficient to sustain his conviction. When considering a claim of insufficient evidence, this court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in [the] light most favorable to the conviction, [is] sufficient" to sustain the verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court "must determine whether, under the facts in the record and any legitimate inferences that can be drawn from them, a jury could reasonably conclude the defendant was guilty of the offense charged." *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). We must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "[A]ll inconsistencies in the evidence are also resolved in favor of the state." *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

In order to convict a defendant of violating a harassment restraining order, the state must prove beyond a reasonable doubt that a valid harassment restraining order was in effect and that the defendant knowingly violated the order. Minn. Stat. § 609.748, subd. 6 (2008). Minnesota statutes define "know" as requiring only "that the actor believes that the specified fact exists." Minn. Stat. § 609.02, subd. 9(2) (2008).

Ramey does not contest that he had contact with R.P. or that the HRO was in effect at the time. Instead, Ramey argues that the evidence was insufficient to prove that he "knowingly violated" the HRO because it would have been reasonable for him to believe that the order was no longer valid once the officials at the adult detention center allowed R.P. to visit Ramey. Ramey asserts that the evidence that he "knowingly" violated the HRO was "purely circumstantial," and he argues for application of the heightened scrutiny that applies when any element of an offense is proved by circumstantial evidence. *See State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) ("The heightened scrutiny applied to circumstantial evidence is not limited to cases in which every element required for conviction was proven entirely by circumstantial evidence. Instead, the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence.").

"The intent element of a crime, because it involves a state of mind, is generally proved circumstantially, and the jury is in the best position to evaluate the credibility of witnesses and weigh the evidence regarding intent." *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *review denied* (Minn. May 20, 2003). But Ramey mischaracterizes the evidence of his intent as entirely circumstantial. Ramey stipulated that he had been

served with the HRO prior to any of the proved contacts. And the HRO expressly prohibits any contact between Ramey and R.P. through its effective date of July 7, 2010. The HRO also states that "[v]iolation of this Order For Relief may be treated as a misdemeanor, gross misdemeanor, or felony." Thus, Ramey's stipulation provided direct evidence that he knew the HRO was scheduled to be in effect beyond the date of all of the proved contacts and that violation of the HRO was a crime. We therefore do not analyze the sufficiency of the evidence under the heightened standard that applies to circumstantial evidence.

The only circumstantial aspect of this case was Ramey's argument that he reasonably believed that the restraining order was no longer in effect. There was no direct evidence that Ramey believed the order had been vacated, or that it was vacated, prior to the July 7, 2010 expiration date. And the jury was free to reject Ramey's argument that he reasonably believed the HRO was no longer in effect despite the express terms of the HRO. *See Webb*, 440 N.W.2d at 430 (stating that a "jury normally is in the best position to evaluate circumstantial evidence, and that their verdict is entitled to due deference"). And because the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the Ramey had contact with R.P. at a time when he knew the HRO was in effect, we will not disturb its verdict.

III.

Ramey advances several arguments in his pro se brief. Ramey's arguments regarding double jeopardy and the sufficiency of the evidence have been discussed

above. We have reviewed Ramey's remaining claims and find them to be without merit. *See Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se argument without detailing consideration of each argument).

Affirmed.

Dated:

Judge Michelle A. Larkin