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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2179**

State of Minnesota,
Respondent,

vs.

Luis Roberto Zaldivar Rodriguez,
Appellant.

**Filed February 3, 2009
Reversed
Stauber, Judge**

Martin County District Court
File No. 46CR052059

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
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Lea, MN 56007 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of misdemeanor violation of an order for protection (OFP), appellant argues that the evidence was insufficient to support his conviction. Because there was not a valid OFP in place on the date of the alleged offense, we reverse.

FACTS

On April 14, 2005, the marriage of B.P. and appellant Luis Rodriguez was dissolved. Prior to the dissolution of the marriage, on April 11, 2003, B.P. obtained an “Emergency (Ex Parte) Order for Protection” from the Watonwan County District Court. The order was for seven days, during which time it prohibited all contact between B.P. and appellant. The court ordered a subsequent hearing for April 15, 2003. At that hearing, B.P. was granted a two-year OFP. On April 6, 2005, an “Extension of Order for Protection” was granted extending the OFP until April 15, 2006.

In June 2005, B.P. filed a motion primarily pertaining to the parties’ dissolution decree. In response to this motion, the district court issued an order on July 7, 2005, stating “that the April 11, 2003 [OFP] shall continue until April 11, 2006, as to protection of [B.P.] from harm or fear of harm from [appellant].” The court further ordered that “the April 11, 2005 amended [OFP] shall be quashed.”

In December 2005, appellant was charged with violating the OFP. Appellant moved to dismiss the complaint on the basis that there was not a valid OFP in place on November 21, 2005, the date of the alleged OFP violation. The district court denied the motion, noting but not interpreting the July 7, 2005 order quashing the OFP, but holding

that the OFP order dated April 6, 2005, effectively extended the OFP order dated April 15, 2003, to April 15, 2006. A jury subsequently found appellant guilty of the charged offense. This appeal followed.

D E C I S I O N

When assessing the sufficiency of evidence, the reviewing court is “limited to 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 jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court must assume that 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). The verdict should stand “if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004) (quotation omitted).

Appellant was charged with misdemeanor violation of an order for protection pursuant to Minn. Stat. § 518B.01, subd. 14(b) (2004). To convict appellant of this offense, the state had to prove beyond a reasonable doubt that (1) there was an existing court order for protection; (2) the defendant knew of the order; and (3) the defendant violated a term or condition of the order for protection. *Id.*; *State v. Colvin*, 629 N.W.2d 135, 138 (Minn. App. 2001) (stating that “[t]he state is required to prove the existence, and defendant’s awareness, of the order for protection, in addition to a violation of the order.”), *rev’d on other grounds*, 645 N.W.2d 449 (Minn. 2002).

Appellant argues that there was insufficient evidence to support his conviction because the state failed to prove the existence of a valid OFP. To support his claim, appellant points to the language in the July 7, 2005 order pertaining to the OFPs obtained by B.P. Appellant contends that because the dates in the July 7, 2005 order conflict with the dates of the earlier OFPs obtained by B.P., the July 7, 2005 order confuses the issue and effectively eliminates the existence of a valid OFP.

We agree, but note that because the July 7, 2005 order was not admitted into evidence, appellant is effectively arguing that the district court erred in denying his motion to dismiss. Prior to trial, appellant moved to dismiss on the basis that, in light of the July 7, 2005 order, there was not a valid OFP in place on the date of the alleged OFP violation. The pertinent language contained in the July 7, 2005 order states as follows:

5. That an amended [OFP] was issued by this Court on April 11, 2005 allowing limited contact between [B.P.] and [appellant].

....

IT IS THEREFORE ORDERED that the April 11, 2003 [OFP] shall continue until April 11, 2006 as to protection of [B.P.] from harm or fear of harm from [appellant].

IT IS FURTHER ORDERED that the April 11, 2005 amended [OFP] shall be quashed.

The dates contained in the July 7, 2005 order conflict with the dates of the OFPs purportedly obtained by B.P. Although we agree with the state that the errors with respect to the dates are most likely clerical errors, these errors significantly confuse the

issue. In light of the confusion, it would be unreasonable to expect a lay person, much less the police, to know whether there was a valid OFP in place.

Therefore, the district court erred in denying the motion to dismiss because the state could not prove beyond a reasonable doubt the first element of the offense: that there was a valid OFP in place at the time of the alleged violation.

Reversed.