

*This opinion is nonprecedential except as provided by  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  
A21-1512**

State of Minnesota,  
Respondent,

vs.

Brian Adam Burba,  
Appellant.

**Filed September 12, 2022  
Affirmed in part and reversed in part  
Gaïtas, Judge**

St. Louis County District Court  
File No. 69VI-CR-21-144

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

Bryan M. Lindsay, Gilbert City Attorney, Trenti Law Firm, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Gaïtas, Judge.

**NONPRECEDENTIAL OPINION**

**GAÏTAS**, Judge

Appellant Brian Adam Burba appeals his convictions, following a jury trial, for violating a domestic-abuse no-contact order (DANCO) and for obstructing legal process. Burba asks us to reverse both convictions for insufficient evidence. He argues that

respondent State of Minnesota failed to prove that (1) he knew there was a DANCO that prohibited him from having contact with his wife and (2) he obstructed legal process by intentionally and substantially frustrating the arresting officer's ability to apprehend him for the violation. In a pro se supplemental brief, Burba alleges additional errors.

Because the trial evidence failed to establish beyond a reasonable doubt that Burba knew there was an active DANCO, we reverse his conviction for violating the DANCO. But, because we conclude that the evidence was sufficient to support the obstructing-legal-process conviction and we reject Burba's pro se claims, we affirm in part.

## **FACTS**

After Burba's wife reported that Burba was at her home in violation of a DANCO, an officer responded to the home and, following a brief struggle, arrested Burba. Based on this incident, the state charged Burba with violating a DANCO, Minn. Stat. § 629.75, subd. 2(b) (2020), and obstructing legal process by interfering with a peace officer, Minn. Stat. § 609.50, subd. 1(2) (2020). A jury found Burba guilty of both offenses. The district court entered convictions for both offenses and sentenced Burba to 90 days in jail.

Burba appealed from the judgment of conviction. In his appeal, Burba asks us to reverse both of his convictions for insufficient evidence. Burba also raises additional issues in a pro se supplemental brief. The state did not file a responsive brief in this appeal.

Because Burba challenges the sufficiency of the evidence underlying his convictions, we summarize the trial evidence, which was as follows. In February 2021, Burba's wife called 911 to report that Burba had come to her house and was attempting to kick her out. A police officer for the City of Gilbert responded to the call. The officer

recalled that there was a DANCO that prohibited Burba from having contact with his wife, and the officer confirmed this information.

Burba's wife met the officer at the front door. She said that she was unsure whether there was an active DANCO because Burba told her there was no DANCO in effect. The officer advised Burba's wife that there was an active DANCO. Hearing Burba in the house, the officer then entered to arrest Burba for the violation.

Burba was sitting in the dining room. When the officer informed him that he was under arrest for violating the DANCO, Burba asked the officer to produce a copy of the DANCO. The officer repeated that Burba was under arrest and asked Burba to stand against the wall. Burba remained seated and argued with the officer, telling him that there was no order in effect that prohibited him from having contact with his wife.

The officer took Burba's arm and ordered Burba to stand. With the officer's assistance, Burba stood up. The officer then attempted to handcuff Burba. During this process, Burba told the officer that he would not comply. He also twisted and turned around, preventing the officer from handcuffing him. The officer repeatedly ordered Burba to "stop resisting." Eventually, the officer performed "a common peroneal knee strike" and brought Burba to the ground. On the ground, Burba continued to resist the officer's efforts to handcuff him. After a struggle on the floor, however, the officer handcuffed Burba and led him out of the home.

During Burba's trial, the state introduced video from the officer's body-worn camera. The video shows most of the interaction described by the officer during his testimony, although the struggle between the officer and Burba on the floor is not entirely

visible. Additionally, the state introduced a certified copy of a pretrial DANCO dated December 28, 2020 that prohibited Burba from having contact with his wife. The DANCO states that it “will remain in effect until disposition of the case or until further order or modification.” Finally, the state introduced an order canceling the DANCO, effective May 19, 2021. The state presented no evidence at trial that Burba was present in court when the DANCO was issued, that the DANCO was served on Burba, or that Burba otherwise was informed of the existence of the DANCO.

Burba, who was representing himself, also testified at the trial. He acknowledged that he had contact with his wife on the date of the incident. But when the prosecutor asked Burba whether the DANCO was in effect at that time, Burba testified, “Not to my knowledge.” Burba agreed that he took “steps to prevent [him]self from being arrested,” such as “push[ing] back” from the wall. He also admitted that the video from the officer’s body-worn camera was accurate.

## **DECISION**

### ***Sufficiency-of-the-Evidence Claims***

Burba argues that the trial evidence was insufficient to support his convictions for violating a DANCO and obstructing legal process. We agree that the state failed to prove the DANCO violation beyond a reasonable doubt but conclude that sufficient evidence supports the obstructing-legal-process conviction.

We initially identify our standard of review for criminal sufficiency-of-the-evidence claims. To convict a defendant, the state must prove each element of a charged crime beyond a reasonable doubt. U.S. Const. amends. V, XIV; Minn. Const., art. I, § 7; *State v.*

*Culver*, 941 N.W.2d 134, 142 (Minn. 2020). In considering whether sufficient evidence supports a jury verdict, appellate courts “view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict.” *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020) (quotation omitted). We will not disturb a verdict “[i]f the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty of the charged offense.” *State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017), *rev. denied* (Minn. Mar. 28, 2017).

**A. Because the state failed to establish that Burba knew the DANCO was in effect, the trial evidence was insufficient to support Burba’s conviction for violating the DANCO.**

Burba contends that the state failed to prove he had knowledge of the active DANCO, which is an element of the offense. We agree that the state’s evidence was insufficient to prove this element.

“[A] person who knows of the existence of a [DANCO] issued against the person and violates the order is guilty of a misdemeanor.” Minn. Stat. § 629.75, subd. 2(b). To establish Burba’s guilt of this offense, the state was required to prove beyond a reasonable doubt that (1) an active DANCO existed, (2) Burba knew there was an active DANCO, and (3) he violated the DANCO. *See State v. Shaka*, 927 N.W.2d 762, 771 (Minn. App. 2019), *rev. granted* (Minn. July 16, 2019) and *appeal dismissed* (Minn. Nov. 19, 2019); *State v. Pakhnyuk*, 926 N.W.2d 914, 919 (Minn. 2019) (stating that the state bears the burden of proving beyond a reasonable doubt a defendant’s violation of a criminal statute). The second element—knowledge—is at issue here.

The state may use direct or circumstantial evidence to prove the elements of a crime. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). The key distinction between these two forms of evidence is that circumstantial evidence inherently “requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* (citing *State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013) (Stras, J., concurring)).

Knowledge, which is a state of mind, is often proven by circumstantial evidence alone. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). Here, for example, there was no direct evidence that Burba knew that the DANCO was in effect. In fact, he repeatedly denied having such knowledge during his encounter with the officer. And he again denied such knowledge at trial. Thus, the only evidence that Burba knew there was an active DANCO was circumstantial.

When the evidence supporting an element of an offense is purely circumstantial, the appellate court reviews the sufficiency of that evidence with greater scrutiny. *Id.* at 473. In these circumstances, we apply a more stringent standard of review, which requires two steps. *Harris*, 895 N.W.2d at 600. The first step is to identify the circumstances proved by the state. *Id.* To do so, the appellate court “winnow[s] down” the presented evidence by “resolving all questions of fact in favor of the jury’s verdict” and disregarding any evidence inconsistent with the verdict. *Id.* The second step is to determine whether the

circumstances proved are consistent with the inference of guilt and inconsistent with any reasonable inference of innocence. *Id.* At this step of the analysis, the appellate court does not defer to the jury's choice among reasonable inferences. *Al-Naseer*, 788 N.W.2d at 474. If the circumstances proved are consistent with a reasonable inference other than guilt, the evidence is insufficient, and any resulting conviction must be reversed. *See Harris*, 895 N.W.2d at 603.

Viewing the evidence in the light most favorable to the state, we first identify the relevant circumstances proved as follows. There was a pretrial DANCO in effect in February 2021 that prohibited Burba from having contact with his wife. In February 2021, Burba's wife reported that he was at her house. Burba was present at his wife's house. The arresting officer confirmed that the DANCO was active and arrested Burba.

Applying the second step of the analysis, we consider whether the circumstances proved exclude beyond a reasonable doubt any reasonable inference other than guilt. *See Al-Naseer*, 788 N.W.2d at 473. We cannot conclude that the circumstances proved at trial rule out the alternative hypothesis that Burba did not have knowledge of the DANCO. A factfinder could infer that Burba knew of the pretrial DANCO. But from the very limited trial evidence, a factfinder also could reasonably infer that Burba had no knowledge of the DANCO. In other words, the circumstances proved were equally consistent with a reasonable inference that Burba did not know the DANCO was in effect. Thus, the state's circumstantial evidence failed to prove the knowledge element of the alleged DANCO violation beyond a reasonable doubt. For this reason, we reverse Burba's conviction for violating the DANCO. *See Harris*, 895 N.W.2d at 598.

**B. Sufficient evidence supports Burba's obstructing-legal-process conviction.**

Burba argues that we must reverse his obstructing-legal-process conviction because the state's trial evidence failed to establish that he intentionally and substantially frustrated or hindered the arresting officer's performance of his duties. We disagree.

A person commits the offense of obstructing legal process if the person intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties." Minn. Stat. § 609.50, subd. 1(2). To convict an individual of this offense, the state must prove beyond a reasonable doubt that (1) a peace officer was engaged in the performance of official duties; (2) the defendant obstructed, resisted, or interfered with the officer's performance of official duties; and (3) the obstruction, resistance, or interference was intentional. *State v. Ihle*, 640 N.W.2d 910, 915 (Minn. 2002). A defendant must do more than "mere[ly] interrupt[]" an officer performing official duties. *Id.* Rather, the defendant's actions must "substantially" frustrate or hinder the officer's performance of official duties. *Id.*; see also *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988) ("[P]hysically obstructing or interfering with a police officer involves not merely [verbally] interrupting an officer but substantially frustrating or hindering the officer in the performance of [the officer's] duties.").

Burba seems to challenge the state's evidence of both his intent and the degree to which he frustrated or hindered the officer's efforts to arrest him. Viewing the trial evidence in the light most favorable to the verdict, we are satisfied that the state proved



beyond a reasonable doubt that Burba intentionally attempted to substantially frustrate or hinder the officer's performance of his official duties.

At trial, the officer testified about Burba's verbal and physical efforts to resist arrest. This testimony was corroborated by video from the officer's body-worn camera, which showed a physical struggle. And during his own trial testimony, Burba admitted that he took "steps to prevent [him]self from being arrested."

Given this evidence, the jury reasonably concluded that Burba intentionally and substantially interfered with the officer's ability to perform his job. We therefore conclude that the trial evidence was sufficient to support Burba's conviction for obstructing legal process.

### ***Burba's Pro Se Claims***

Finally, we turn to Burba's pro se supplemental brief, where he raises additional claims. We understand Burba's pro se brief to raise the following issues: (1) he was prevented from accessing required trial materials, including briefs and legal research tools, and he did not timely receive the names of potential jurors; (2) he never resisted the officer, and even if he had, he did not intend to obstruct justice; (3) he received a jury trial but he wished to waive a jury trial; (4) the district court failed to afford him his "rights"; (5) the trial transcript does not adequately reflect the proceedings; (6) the district court judge was biased against him; (7) the officer lied under oath; (8) the body-worn camera footage was edited; and (9) he received ineffective assistance of counsel. We have already addressed Burba's argument that the evidence was insufficient to support his conviction for obstructing legal process. Because Burba's pro se supplemental brief does not include any

argument or legal authority to support his other claims, and because Burba failed to object to the alleged trial errors in the district court, we do not consider his remaining pro se arguments.

An appellate court need not “consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.” *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008); *see also State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002); *Louden v. Loudon*, 22 N.W.2d 164, 166 (Minn. 1946) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”). Moreover, an appellate court “generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

We have carefully reviewed the entire record of the proceedings in the district court. Our review has revealed no obvious prejudicial errors. Because Burba’s pro se claims are insufficiently briefed and were largely unpreserved, we do not further address them.

**Affirmed in part and reversed in part.**