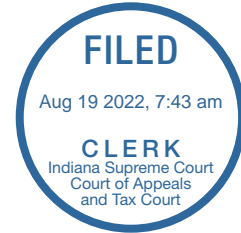


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

David Monsivais, IV,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 19, 2022

Court of Appeals Case No.
21A-CR-2506

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No. 71D03-
2005-F3-33

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, David Monsivais IV (Monsivais), appeals following his conviction for rape, a Level 3 felony, Ind. Code § 35-42-4-1(a)(1); residential entry, a Level 6 felony, I.C. § 35-43-2-1.5; stalking, a Level 6 felony, I.C. § 35-45-10-5(a); and two Counts of domestic battery, Class A misdemeanors, I.C. § 35-42-2-1.3(a)(1).

[2] We affirm.

ISSUE

[3] Monsivais presents this court with two issues, which we consolidate and restate as the following single issue: Whether the State presented sufficient evidence beyond a reasonable doubt to sustain his convictions for rape and stalking.

FACTS AND PROCEDURAL HISTORY

[4] In the early summer of 2019, C.R. entered into a relationship with Monsivais and “everything happened very fast.” (Transcript Vol. II, p. 21). In October 2019, C.R. gave Monsivais a key to her residence in South Bend, Indiana, and added him to the property title of her home. Although they were happy initially, the relationship soon became acrimonious and unhealthy. C.R. first started to become concerned, when on October 1, 2019, at approximately 4:30 a.m., Monsivais pounded on C.R.’s bedroom window and screamed at her. When she heard him pulling light fixtures off the back of her house, she called 911. This incident was followed by a “period of calm” until October 27, 2019. (Tr. Vol. II, p. 24). That day, C.R. was holding a stack of dishes which were

slapped out of her hands by Monsivais. Monsivais then knocked C.R. down, laid on top of her, and put his hands around her neck until she lost consciousness.

[5] On February 26, 2020, C.R. left the residence to go for a walk. As she stepped on the concrete steps leading to her home, Monsivais grabbed her arm and ordered her to “get back here.” (Tr. Vol. II, p. 49). He tried to spin C.R. around and slammed her into the concrete steps where she landed on her knees and elbow. Monsivais eventually left the house but returned later that night, when he again injured C.R. by pushing her to the floor.

[6] From October 2019 to March 2020, Monsivais threatened C.R. on multiple occasions. On one occasion, Monsivais threatened to send C.R.’s son a picture of her in which she was partially unclothed. He also threatened to shove her down the stairs and told her, “I’ll do whatever I want to you.” (Tr. Vol., II. p. 62). Not only did he threaten to kill C.R. several times, he also informed her that he would kill himself if she would refuse to see him. After Monsivais called C.R. forty times on February 24, 2020, C.R. attempted to end the relationship because she no longer felt safe around him. She texted him during the first week of March, while Monsivais was out of state for work to avoid a violent reaction. Despite C.R.’s text, Monsivais continued to come to her house uninvited.

[7] Eventually, C.R. obtained a protective order against Monsivais. When Monsivais was notified of the protective order, he became angry and texted

C.R. that she was “going to ruin his life.” (Tr. Vol. II., p. 42). “Every day” Monsivais followed C.R. to and from work and would approach her when she stopped at a gas station. (Tr. Vol. II, p. 47). One time, he tried to run her car off the road. Monsivais also drove up to C.R.’s home and would attempt to block her in the driveway and enter the garage. The protective order terminated on March 27, 2020.

[8] On March 15, 2020, Monsivais called C.R. 93 times and texted her approximately 100 times. C.R. responded to some of the calls and texts because she knew from experience that otherwise Monsivais would come to her house. In one text, Monsivais told C.R. that “I want to have sex with you, I’m not taking no for an answer. I’m going to do whatever I want to do.” (Tr. Vol. II, p. 81). Later that night, Monsivais arrived at C.R.’s home. When C.R. refused to let Monsivais enter, he hit the front door with enough force that the deadbolt broke through the drywall. C.R. hid in the dining room, and when Monsivais went upstairs, she ran out of the front door. Chasing after C.R., he attempted to apologize to her and asked her to come back inside the house. Instead of re-entering the house, C.R. went to the garage to smoke. In the garage, Monsivais attempted to undress C.R. and started touching her sexually, while she tried to avoid his advances. They eventually went inside the house and upstairs to the bedroom.

[9] In the bedroom, Monsivais ordered C.R. to bend over so he could lick her anus. He told C.R. to assume sexual positions that she was uncomfortable with and he made her perform oral sex on him. Monsivais had “complete control of the

situation” and when they finished sexual intercourse, Monsivais did not allow C.R. to leave the bed to wash up. (Tr. Vol. II, p. 91). When C.R. finally was able to call 911, she stated that Monsivais wanted to have sex with her and that she had cooperated because she did not want to get killed. When officers arrived at the residence, they noticed that C.R. was “[v]ery scared, hysterical, [and was] crying[.]” (Tr. Vol. II, p. 246).

[10] On May 21, 2020, the State filed an Information, charging Monsivais with rape, a Level 3 felony, and residential entry, a Level 6 felony. On September 30, 2020, the State filed an amendment, adding the additional charges of stalking, a Level 6 felony, strangulation, a Level 6 felony, and two Counts of domestic battery, as Class A misdemeanors, to the Charging Information. On August 9 through August 12, 2021, a jury trial was conducted. At the close of the evidence, the jury found Monsivais guilty on all Counts with the exception of the strangulation charge. On October 12, 2021, Monsivais was sentenced to sixteen years for rape, eighteen months for residential entry, and thirty months for stalking, to be served consecutively. The trial court sentenced Monsivais to twelve months on each of the domestic battery convictions, to run concurrently to each other and to the other convictions.

[11] Monsivais now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[12] Monsivais contends that the State failed to present sufficient evidence beyond a reasonable doubt to support his convictions for rape and stalking. Our standard

of review for sufficiency of the evidence claims is well settled: we do not reweigh the evidence or judge the credibility of the witnesses. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017). We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id.* We will affirm a defendant’s conviction “if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007).

I. Rape Conviction

[13] To convict Monsivais of rape, the State was required to establish that Monsivais, by the use of force or the imminent threat of force, knowingly had sexual intercourse with C.R. or caused C.R. to perform or submit to other sexual conduct. See I.C. § 35-42-1(a)(1). Contesting that C.R. was not compelled by force to submit to his sexual advances, Monsivais argues that “C.R. [did] not complain that she was forced.” (Appellant’s Br. p. 9).

[14] The presence or absence of forceful compulsion is viewed from the victim’s perspective, not the assailant’s. *Tobias v. State*, 666 N.E.2d 68, 72 (Ind. 1996). The force used need not be physical or violent, and the forcible compulsion may be inferred from the circumstances. *Newbill v. State*, 884 N.E.2d 383, 392 (Ind. Ct. App. 2008). “Force or threat of force may be shown even without evidence of the attacker’s oral statement of intent or willingness to use a weapon and cause injury, if from the circumstances it is reasonable to infer the

attacker was willing to do so.” *Lewis v. State*, 440 N.E.2d 1125, 1127 (Ind. 1982), *cert. denied*.

[15] After texting C.R. earlier in the day that “I want to have sex with you, I’m not taking no for an answer. I’m going to do whatever I want to do[,]” Monsivais arrived at C.R.’s home where he physically broke down the front door. (Tr. Vol. II, p. 81). He chased down C.R., and they both entered the garage, where Monsivais attempted to undress C.R. and started touching her sexually, while she tried to avoid his advances. They eventually went inside the house and upstairs to the bedroom. Aware that Monsivais “does not tolerate anything that’s like questioning him or challenging whatever he wants,” C.R. was trying not to do anything that would “trigger him to physically attack” her. (Tr. Vol. II, p. 87). C.R. informed the jury that Monsivais had “complete control of the situation” and “commanded [her] to be unclothed, to be posed a certain way on the bed, to stand a certain way, like he’s explicitly telling [her] how he wants [her] positioned and everything and proceeds to have sex.” (Tr. Vol. II, p. 91). Based on these facts, there is sufficient evidence from which a jury could reasonably conclude that Monsivais compelled C.R. with the imminent threat of force to submit to sexual intercourse.

II. *Stalking Conviction*

[16] To convict Monsivais of stalking, the State was required to establish that, between October 1, 2019, and July 15, 2020, Monsivais knowingly or intentionally engaged in a course of conduct involving repeated or continuing

harassment of C.R. that would make a reasonable person feel terrorized, frightened, intimidated, or threatened, and that actually caused C.R. to feel terrorized, frightened, intimidated, or threatened. I.C. § 35-45-10-5(a). For the purpose of the statute, harassment is defined as “conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress.” I.C. § 35-45-10-2. With respect to this charge, Monsivais’ entire argument consists of the statement that “CR shows no concern for [him] as she continues to communicate with him before and after the alleged rape[.]” (Appellant’s Br. p. 9).

[17] An individual’s state of mind may be inferred from that individual’s statements and demeanor. *See Johnson v. State*, 721 N.E.2d 327, 333 (Ind. Ct. App. 1999) (observing that victim’s statements may support an inference that victim actually felt terrorized, frightened, intimidated, or threatened by defendant’s conduct), *trans. denied*; *Simms v. State*, 791 N.E.2d 225, 229-30 (Ind. Ct. App. 2003) (victim’s acts of filing for protective order and taking children to stay at her mother’s house while victim stayed with friend in response to defendant’s conduct supported an inference that victim actually felt terrorized, frightened, intimidated, or threatened). The State presented evidence that Monsivais repeatedly harassed C.R. over a period of months after she attempted to break off their romantic relationship. C.R. reported that Monsivais threatened her “a lot” between October 2019 and March 2020 to the point that she obtained a

protective order. (Tr. Vol. II, p. 61). C.R. testified to instances where Monsivais followed her “every day” to and from work. (Tr. Vol. II, p. 47). He texted and called her insistently, and C.R. responded to some of the calls and texts in hope of preventing further harm because she knew from experience that otherwise Monsivais would come to her house. C.R. testified that Monsivais’ behavior caused her to fear that her life was in danger and that she felt terrorized and afraid of him. In fact, one time, Monsivais tried to run C.R.’s car off the road. Based on the record, we find sufficient evidence of probative value from which the jury could conclude that Monsivais caused C.R. to feel “terrorized, frightened, intimidated, or threatened.” I.C. § 35-45-10-5(a).

CONCLUSION

[18] Based on the foregoing, we hold that the State presented sufficient evidence to support Monsivais’ convictions for rape and stalking.

[19] Affirmed.

[20] May, J. and Tavitas, J. concur