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IN THE
COURT OF APPEALS OF INDIANA

Joseph T. Buti,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 21, 2022

Court of Appeals Case No.
21A-CR-1364

Appeal from the St. Joseph
Superior Court

The Honorable John M.
Marnocha, Judge

Trial Court Cause No.
71D02-2003-F5-83

Crone, Judge.

Case Summary

- [1] Joseph T. Buti appeals his conviction for level 5 felony stalking, arguing that it is unsupported by sufficient evidence. Finding sufficient evidence, we affirm.

Facts and Procedural History

- [2] The facts favorable to Buti's conviction show that on December 6, 2019, Buti and K.P. had been in an intimate relationship and had a child together but were living separately. That day, K.P. was driving Tristen Snider in her car to his residence. Snider thought K.P. took a wrong turn and asked her whether she was lost. K.P. replied that her "baby daddy" was behind them. Tr. Vol. 2 at 37. Snider observed Buti drive his car next to K.P.'s car, "swerving all around[,] trying to cut in front of [them and] slam on the brakes in front of [them] to get [K.P.] to stop." *Id.* at 38. K.P. was "panicked." *Id.* at 45. She slammed on her brakes and turned left. She called 911 and started to drive to the South Bend Police Department. *Id.* at 39. When K.P. got close to the police station, Buti stopped following her. Buti called K.P., and K.P. put the call on speaker. Buti "talked about how he was going to shoot up the car, kill [K.P.] and who was with her; and he said he was going to shoot up her house, kill her and their daughter." *Id.* at 40.
- [3] When K.P. and Snider arrived at the police station, K.P. gave a statement to Officer Dalton Stroupe. She told him that "she was scared to go home [and] that the situation was nerve-wracking." *Id.* at 56. Afterward, K.P. went to Snider's house, and Buti and two others showed up. Snider refused to open the door to Buti, and one of the men smashed the back window of Snider's car with a brick. *Id.* at 41.

- [4] Later that month, Snider was working at Walmart, when K.P. came to talk to him. Snider saw Buti following K.P., “peaking [sic] around corners, [and] sneaking around.” *Id.* at 42. Buti followed Snider as Snider walked to the back of the store to clock out. At one point, Buti “got in [Snider’s] face” and shoved him. *Id.* at 42. By the time Snider clocked out and returned to the sales floor, Buti had left, and someone had called the police. K.P. and Snider both sought and received a protective order against Buti that month.
- [5] On the evening of March 26, 2020, Officer Joseph Ransberger spoke to K.P. at her home after he responded to a dispatch that someone was threatening her. Officer Ransberger observed that K.P. was “visibly upset, crying, sobbing, shaking[,]” and she told him that “[i]f [Buti] kills me, please, tell my daughter I love her.” *Id.* at 67.
- [6] On March 28, 2020, K.P. called police and requested a residence check because Buti had broken a window. *Id.* at 69. Officer Ransberger responded and located the broken window, which he arranged to have boarded up. Early the next morning, K.P. called 911 and reported that Buti was in her backyard “banging” on her windows. *Id.* at 80; State’s Ex. 3 at 3:14. K.P. told dispatch that she was too frightened to leave her bathroom, where she was hiding, and that she had turned off all the lights so that Buti could not tell if she was home. State’s Ex. 3 at 1:25, 2:35, 5:53. K.P. said that she was scared that Buti might see her if she looked to see whether he was still outside, and she was afraid that her “house might get shot up” because Buti had threatened to shoot her. *Id.* at 1:25. Officer Dominic Zarate arrived at K.P.’s house, but Buti had left. Officer Zarate

observed that K.P. appeared “upset[,] ... [a]nxious, worried, [and] scared.” Tr. Vol. 2 at 81. K.P. showed Officer Zarate the boarded-up window and informed him that Buti had broken it.

[7] Later that morning, K.P. called 911 again to report that Buti had returned and broken her bedroom window with a gun while she was in the bedroom sleeping. *Id.* at 88; State’s Ex. 4 at 0:22, 4:50. She said that she had fled the house, jumped into her car, and was being chased by Buti. Tr. Vol. 2 at 88; State’s Ex. 4 at 0:29. During the chase, K.P. was on the phone with dispatch and said that she was “running for [her] life” and that Buti had a gun and was shooting at her. State’s Ex. 4 at 0:55, 1:26. Eventually, Buti stopped chasing her, and she told dispatch that she was returning home. Shortly after she got home, Officer Zarate arrived. He observed that K.P. was “upset that she was chased,” and she showed him the broken bedroom window. Tr. Vol. 2 at 89.

[8] The State charged Buti with level 5 felony stalking, level 6 felony intimidation, level 6 felony residential entry, and level 6 felony criminal recklessness. At trial, K.P. testified for Buti and stated that she and Buti were experiencing difficulties in their relationship in late 2019 and early 2020 after she discovered that he was cheating. Tr. Vol. 2 at 121-22. When describing Buti’s breaking of the bedroom window, she said that the window broke because Buti knocked “a little bit too hard[,]” and she was “shaking mad” that he had broken the window and was so mad that she chased him in her car. *Id.* at 128. K.P. claimed that she “wasn’t scared [but] was more angry.” *Id.* K.P. also testified that “[she] never felt that

[Buti] would actually hurt [her] or anything around [her] or [her] daughter.” *Id.* at 130.

[9] The jury found Buti guilty of stalking and intimidation and acquitted him of the remaining charges. The trial court sentenced Buti to concurrent sentences of three years for stalking and one year for intimidation, suspended, and placed him on probation for two years. This appeal ensued.

Discussion and Decision

[10] Buti challenges the sufficiency of the evidence supporting his level 5 felony stalking conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

[11] To convict Buti of stalking, the State was required to prove beyond a reasonable doubt that he engaged in “a knowing or an intentional course of conduct involving repeated or continuing harassment of [K.P.] that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and

that actually cause[d] [K.P.] to feel terrorized, frightened, intimidated, or threatened.” Ind. Code § 35-45-10-1. Buti was charged with and convicted of stalking as a level 5 felony because K.P. had a protective order against him and he had been given actual notice of the order. Ind. Code § 35-45-10-5(b)(2).

[12] Buti’s sole challenge is that the evidence was insufficient to establish that his conduct actually caused K.P. to feel terrorized, frightened, intimidated, or threatened. He asserts that K.P. testified that she felt angry as opposed to scared or terrorized, that she never felt that Buti would actually hurt her, her daughter, or anything around her, and that she was the one who chased Buti. Tr. Vol. 2 at 128, 130. Although K.P. was the victim, a victim’s testimony is no different from that of any other witness, and the jury “must consider *all* the evidence presented at trial.” *Ludy v. State*, 784 N.E.2d 459, 461-62 (Ind. 2003) (holding that jury instruction focusing jury’s attention solely on victim’s testimony was error).

[13] Here, as Buti concedes, the State presented evidence of K.P.’s behavior in response to his conduct through the observations of police officers and the recordings of two 911 calls she made. Appellant’s Br. at 8. 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 inference that victim actually felt terrorized, frightened, intimidated, or threatened by defendant’s conduct), *trans. denied* (2000); *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 inference that victim actually felt terrorized, frightened, intimidated, or threatened). We observe that the police officers testified that on March 26, 2020, K.P. was "visibly upset, crying, sobbing, shaking[,] " and said "[i]f [Buti] kills me, please, tell my daughter I love her[,] " and that on March 29, 2020, she was "upset[,] ... [a]nxious, worried, [and] scared." Tr. Vol. 2 at 67, 81. In addition, K.P. made two 911 calls on March 29, 2020. In the first call, she told dispatch that she was too frightened to leave her bathroom and had turned off all the lights so that Buti could not tell if she was home. State's Ex. 3 at 1:25, 2:35, 5:53. She also said that she was scared that Buti might see her if she looked to see whether he was still outside, and she was afraid that her "house might get shot up" because Buti had threatened to shoot her. *Id.* at 1:25. In the second 911 call, K.P. reported that Buti had broken her bedroom window with a gun while she was in the bedroom sleeping, she had fled the house, and Buti was chasing her. Tr. Vol. 2 at 88; State's Ex. 4 at 0:22, 0:29, 4:50. While Buti was chasing her, she told dispatch that she was "running for [her] life" and that Buti had a gun and was shooting at her. State's Ex. 4 at 0:55, 1:26.

[14] K.P.'s demeanor and statements to police, her decisions to call 911, and her statements to dispatch are probative evidence supporting an inference that she actually felt terrorized, frightened, intimidated, or threatened by Buti's conduct. Buti's argument is merely an invitation to reweigh the evidence, which we must decline. We conclude that sufficient evidence supports Buti's level 5 felony stalking conviction, and therefore we affirm his conviction.

[15] Affirmed.

Bradford, C.J., and Tavitas, J., concur.