MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Ethan D. Myers
Holley & Myers Law
Covington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi K. Stein
Deputy Attorney General

Abigail Dehmlow
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Raven Hathaway,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 12, 2023

Court of Appeals Case No. 22A-CR-2631

Appeal from the Fountain Circuit Court

The Honorable Stephanie Campbell, Judge

Trial Court Cause No. 23C01-2105-F6-175

Memorandum Decision by Judge Kenworthy
Judge Robb concurs.
Judge Crone concurs in result without opinion.

Kenworthy, Judge.

Case Summary

[1] Following a bench trial, the trial court determined Raven Hathaway was guilty of Level 6 felony stalking[1] and Class B misdemeanor criminal mischief. Hathaway now appeals the stalking conviction, challenging the sufficiency of the evidence supporting the conviction. Concluding there is sufficient evidence, we affirm.

Facts and Procedural History

[2] Hathaway was in an on-again, off-again relationship with Ashley Peterson for about four years. Hathaway ended the relationship in December 2020, and the breakup was "[n]ot good." *Tr. Vol. 2* at 8. Peterson told Hathaway she "didn't want anything to do with him" and "not to get a hold [sic]" of her. *Id.* at 36. Peterson testified about seven incidents involving Hathaway after the breakup.

[3] In early March 2021, Peterson was at home with her boyfriend when she saw Hathaway walking up the sidewalk with his son. Peterson locked her screen door because she "didn't want him coming in." *Id.* at 10. Hathaway "offered candy for [Peterson's] kids as a peace offering." *Id.* Peterson asked Hathaway to leave, and Hathaway "turned and walked away and then turned around and came back up to the porch[.]" *Id.* at 11. Hathaway told Peterson her friend

---

[1] Ind. Code § 35-45-10-5(a) (2014).

"needed to come out and talk to him man to man." *Id.* Peterson told Hathaway he "needed to leave or [she] was going to call the cops." *Id.* Hathaway left and Peterson called law enforcement. Peterson said she felt: "Upset. Scared. Nervous." *Id.*

[4] A few days later, Peterson went to work at the library. She forgot her reusable water bottle, which she usually brought to work. Peterson watched Hathaway drive up to the library, "walk up to the picnic table and set a few bottles of water on the picnic table." *Id.* Peterson sat at that same picnic table almost every day for lunch. This incident made Peterson "very worried" because she was unsure "whether it was a huge coincidence or whether . . . [Hathaway] knew that [she] left [her water bottle] at home." *Id.* at 13.

[5] The following month, Peterson was working at the library when Hathaway "came down on his motorcycle and slowed down at the back of [Peterson's] vehicle," throwing something into the vehicle. *Id.* at 14. A concerned library patron retrieved what Hathaway had thrown: a stocking cap containing a hat and gloves Peterson had left at Hathaway's house.

[6] Later that month, Peterson was arriving at work when she noticed Hathaway and his son walking down the street in front of the library. She saw soda cans in the middle of the road near the library. The cans had holes in them and looked like the type of cans Hathaway and his son would shoot with their BB gun. Seeing the cans made Peterson wonder, "[W]hat's he going to do after this[?]" *Id.* at 34.

[7] The same day, when Peterson was sitting at the picnic table during lunch, she noticed something "hanging from the pole that's across . . . the road from the library[.]" *Id.* at 16. "[I]t looked like . . . a black and yellow Batman cup that [she] had when [she and Hathaway] first got together." *Id.* at 16–17. She walked over to the telephone pole and confirmed it looked like the cup Hathaway's son had picked out for her to use, "and one of [her] to go [sic] cups [was] hanging there" but it was "smashed and . . . made into like a wind chime." *Id.* at 17.

[8] At the start of May 2021, Peterson went into the library early to clean. When she finished cleaning, she took out the trash and saw Hathaway approaching the library. Peterson went to her vehicle, making eye contact with Hathaway. Peterson got into her vehicle and locked the doors. She saw Hathaway pushing a wheelbarrow of bricks. Hathaway dropped a brick in the middle of the road and threw a brick behind Peterson's vehicle. Then, Hathaway "stopped at the stop sign and threw a brick at the stop sign." *Id.* at 19. Peterson took pictures of Hathaway pushing the wheelbarrow and of the bricks he threw, and she took a video of Hathaway throwing a brick at the stop sign. Peterson feared Hathaway would throw a brick through the window of her vehicle.

[9] The next day, Peterson was standing outside the library talking with her boyfriend when Hathaway "drove by and he threw something out." *Id.* at 27. She heard "a crash" and saw a shattered bottle behind her manager's vehicle. *Id.*

[10] In addition to these specific incidents, Peterson saw Hathaway come by the library "all the time." *Id.* at 14. Peterson made police reports "every day, every other day, every few days." *Id.* at 37.

[11] The State charged Hathaway with Level 6 felony stalking and Class B misdemeanor criminal mischief.[2] The trial court held a bench trial and found Hathaway guilty as charged. Hathaway appeals the stalking conviction.

Discussion and Decision

[12] "For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact." *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will not reweigh the evidence or assess the credibility of witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). "We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[13] According to Indiana Code Section 35-45-10-5(a), "A person who stalks another person commits stalking, a Level 6 felony." Moreover, Indiana Code Section 35-45-10-1 (1993) defines "stalk" as

> a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or

[2] Hathaway received the criminal mischief charge for throwing the brick at the stop sign.

> threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity.

"Repeated or continuing" means the conduct occurs more than once. *Johnson v. State*, 721 N.E.2d 327, 332–33 (Ind. 1999). And, under Indiana Code Section 35-45-10-2 (1993), "harassment" is "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." Indiana Code Section 35-45-10-3 (2019) includes a nonexclusive list of things considered "impermissible contact," such as "[f]ollowing or pursuing the victim" and "[c]ommunicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means."[3] Hathaway argues none of his acts constitute impermissible contact and his conduct does not violate the objective and subjective requirements under the definition of "stalk."

[3] We must apply the statute in effect at the time the defendant committed the alleged offense. *See State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005) ("Statutes are to be given prospective effect only, unless the legislature unequivocally and unambiguously intended retrospective effect as well."). Here, the legislature amended the list of items to be considered impermissible contact shortly before Hathaway's bench trial. In their briefs, the parties use language from the current version of the statute, which omits the means of communication with the victim (*i.e.* "in person, in writing . . . .") and simply states "[c]ommunicating with the victim." I.C. § 35-45-10-3 (2022). The lists contained in both versions of the statute are nonexclusive, and we need not determine what effect, if any, the means of communication might have on our analysis.

Impermissible Contact

[14] Hathaway argues the first three incidents were not impermissible, and the other four incidents were not contact. For contact to be impermissible, the defendant must have received notice that he cannot contact the victim. *VanHorn v. State*, 889 N.E.2d 908, 912–13 (Ind. Ct. App. 2008), *trans. denied*. In *VanHorn*, the defendant parked on a public street near the victim's home on four occasions and looked at the victim's home, using binoculars on two of the occasions. *Id.* at 909–10. VanHorn argued on appeal of his conviction for stalking his conduct was neither impermissible contact nor any form of contact at all. The Court reversed VanHorn's conviction, but it did not decide whether VanHorn's conduct constituted *contact* under Indiana Code Section 35-45-10-3. Instead, the Court determined VanHorn had no notice his conduct was *impermissible*. *Id.* at 912.

[15] Here, Hathaway claims his case parallels *VanHorn* because Hathaway lacked notice the first three incidents were impermissible. Hathaway says the first incident, where he came to Peterson's house, put him on notice that contact at Peterson's home was impermissible. Yet Peterson had already given Hathaway notice to not contact her: "Shortly after we split I told him I didn't want anything to do with him, not to get a hold [sic] of me." *Tr. Vol. 2* at 36. Hathaway argues the second incident, where he left water bottles on the picnic table the day Peterson forgot her water bottle, occurred in a public place and

> [t]he most egregious inference that can be drawn from leaving the water bottles is irrelevant as the Court noted in *VanHorn*: "The

> fact that VanHorn was looking in the direction of [the victim's] house with binoculars does not alter our analysis. This type of conduct falls more within the ambit of voyeurism." 889 N.E.2d at 913–14.

Appellant's Br. at 10. But Hathaway looking in Peterson's direction is only one inference one can draw from Hathaway's act. A fact-finder may reasonably infer Hathaway knew Peterson forgot her water bottle because he followed her that day—a form of impermissible contact under Indiana Code Section 35-45-10-3.

[16] Finally, Hathaway argues the contact in the third incident, where Hathaway threw Peterson's hat and gloves into her vehicle, was not impermissible and "should have been welcomed." *Appellant's Br.* at 10. Even if a defendant's conduct is not threatening on its face, contact is still impermissible where the defendant is on notice the victim wants to be left alone. *See Garza v. State*, 736 N.E.2d 323, 325 (Ind. Ct. App. 2000) (determining contact was impermissible where the defendant "knew that [victim] did not appreciate or welcome his advances and comments to her"); *cf. Andrews v. Ivie*, 956 N.E.2d 720, 725 (Ind. Ct. App. 2011) (determining contact was impermissible even where the contact involved giving gifts).

[17] As to the remaining incidents, Hathaway asserts he did not contact Peterson because he did not communicate a message. "Contact" is "an establishing of communication with someone or an observing or receiving of a significant signal from a person or object." *Merriam-Webster's On-line Dictionary*,

https://www.merriam-webster.com/dictionary/contact (last visited June 1, 2023) [https://perma.cc/W7GN-SN3J]; *VanHorn*, 889 N.E.2d at 911 (applying the same definition).

[18] Even if we assume Hathaway did not contact Peterson during the fourth incident, where Peterson saw the soda cans near the library, a reasonable fact-finder could decide Hathaway contacted Peterson in each of the remaining incidents. On the fifth incident, Peterson saw a broken cup and a Batman cup—like the cups she had used at Hathaway's home when they were together—hanging from a telephone pole near where she took her lunch each day. On the sixth incident, Hathaway and Peterson saw each other as Peterson went to her vehicle. Hathaway proceeded to put one brick in the middle of the road, drop another brick behind Peterson's vehicle, and throw a third brick at a stop sign. On the seventh incident, Hathaway threw a bottle out the window of his vehicle near Peterson and her boyfriend. A fact-finder could reasonably determine Hathaway's conduct in each of these incidents constitutes a "significant signal" Hathaway directed to Peterson. Hathaway's arguments Peterson did not testify as to the message in each incident amounts to a request to reweigh the evidence, which we must decline.

Objective and Subjective Requirements

[19] According to the stalking statute, the State must prove the defendant's conduct "would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and . . . actually causes the victim to feel terrorized, frightened, intimidated, or threatened." I.C. § 35-45-10-1. Hathaway argues his actions

would not cause a reasonable person to feel "terrorized, frightened, intimidated, or threatened." *Id.* And he says in several instances, Peterson admitted she did not feel those emotions.

[20] As to the objective reasonable person requirement, "[t]here were a few days [the library workers] didn't unlock the door at the library . . . [b]ecause [they] were scared" and "didn't know what [Hathaway] would do[.]" *Tr. Vol. 2* at 28. During the third incident, a "worried" library patron retrieved the items Hathaway put in Peterson's vehicle. *Id.* at 15. And as to the subjective requirement, Peterson said the first incident made her feel "[u]pset. Scared. Nervous." *Tr. Vol. 2* at 11. The second incident made Peterson "very worried." *Id.* at 13. The fourth incident made Peterson concerned about Hathaway's future conduct toward her. The sixth incident caused Peterson to fear Hathaway would throw a brick through the window of her vehicle. Peterson called the police "[e]very day, every other day, every few days." *Id.* at 37. In sum, Hathaway's course of conduct impacted Peterson "a lot . . . even when I come into town I watch. I look around. I'm constantly looking around. When I pull up to the library I'm still looking around before I get out of the vehicle." *Id.* at 28. Thus, there was ample evidence from which a fact-finder could reasonably conclude Hathaway's conduct met the objective and subjective requirements of the stalking statute.

Conclusion

[21] There is sufficient evidence supporting Hathaway's conviction for stalking. Accordingly, we affirm.

[22] Affirmed.

Robb, J. concurs.

Crone, J., concurs in result without opinion.