

Kayla D. Abney-Norton appeals her conviction for intimidation as a class A misdemeanor.¹ Norton raises three issues, which we consolidate and restate as:

- I. Whether the evidence is sufficient to sustain her conviction; and
- II. Whether the trial court properly ordered her to pay restitution.

We affirm in part and remand in part.

The relevant facts follow. On July 15, 2006, Nathan Baker was alone while his parents were traveling in Alaska. He received a text message from Norton stating that, if he “didn’t give her any money,” her boyfriend was going to slash the tires of his car. Transcript at 2. Baker “panicked” and withdrew \$300 from a safe in his parents’ garage. *Id.* at 3. Over the next week, he made several payments to Norton totaling \$5,000, \$3,000 of which belonged to his father. Baker considered not paying Norton, but he was “scared” because Norton kept calling him at home and at work. *Id.* at 5. At one point, Norton informed Baker that she was going to “blow [him] up.” *Id.* at 6.

The State charged Norton with intimidation as a class A misdemeanor. After a bench trial, the trial court found Norton guilty as charged. At the sentencing hearing, Norton testified about her employment history and financial status. The trial court sentenced her to a term of 365 days with 30 days executed and 335 days suspended to probation. As a condition of probation, the trial court ordered her to pay restitution to Baker’s father in the amount of \$3,000.

I.

¹ Ind. Code § 35-45-2-1 (Supp. 2006).

The first issue is whether the evidence is sufficient to sustain Norton's conviction for intimidation as a class A misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses; we look to the evidence and the reasonable inferences therefrom that support the verdict; and we will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. See Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied.

To convict Norton of intimidation as a class A misdemeanor, the State was required to prove beyond a reasonable doubt that she communicated a threat to Baker with the intent that Baker engage in conduct against his will. See Ind. Code § 35-45-2-1. Norton argues that the text message Baker received stating that her boyfriend would slash Baker's tires could have come from her boyfriend; she also claims that, when she said she was going to "blow [Baker] up," the statement was "hyperbole." Appellant's Brief at 6. Norton merely asks that we reweigh the evidence, which we cannot do. See Jordan, 656 N.E.2d at 817.

Based on the record before us, we conclude that the evidence is sufficient. See, e.g., Earlywine v. State, 847 N.E.2d 1011, 1015 (Ind. Ct. App. 2006) (holding that the evidence was sufficient to sustain defendant's conviction for intimidation as a class A misdemeanor).

II.

The next issue is whether the trial court properly ordered Norton to pay restitution. Norton argues that: A) the trial court erred in ordering her to pay restitution to Baker's

father; and B) the trial court abused its discretion by failing both to determine her ability to pay on the record and to fix her manner of payment.

A. Payment to Baker's Father

As a condition of probation, the trial court ordered Norton to pay \$3,000 to Baker's father. Norton argues that the trial court erred in ordering restitution because "Baker's father did not suffer a loss as a direct and immediate result of Norton's criminal act" and because "the restitution order does not reflect the actual loss to the victim, Baker" Appellant's Brief at 8.

The principal purpose of restitution is to vindicate the rights of society and to impress upon the defendant the magnitude of the loss the crime has caused. Pearson v. State, 883 N.E.2d 770, 772 (Ind. 2008) (citing Haltom v. State, 832 N.E.2d 969, 971 (Ind. 2005)). Restitution also serves to compensate the offender's victim. Id. We review a restitution order for an abuse of discretion. Davis v. State, 772 N.E.2d 535, 541 (Ind. Ct. App. 2002), trans. denied. However, a defendant who fails to raise before the trial court an objection to a restitution order waives that possible error. Id.

Here, at the sentencing hearing, Norton did not object to the restitution order requiring her to pay \$3,000 to Baker's father. Thus, she has waived the issue for review. See id.

B. Ability to Pay and Manner of Payment

Norton also argues that the trial court abused its discretion by failing both to determine her ability to pay restitution on the record and to fix the manner of payment. When the trial court enters an order of restitution as part of a condition of probation, the

court is required to inquire into the defendant's ability to pay. Pearson, 883 N.E.2d at 772 (citing Ind. Code § 35-38-2-2.3(a)(5) (“When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.”)). The purpose of the inquiry is to prevent indigent defendants from being imprisoned because of a probation violation based on a defendant's failure to pay restitution. Id. Although the trial court could properly choose to hold a hearing on a defendant's ability to pay restitution, it is not required to do so, and may make a proper inquiry, depending on circumstances, by such actions as reviewing the presentence report and questioning witnesses. See Polen v. State, 578 N.E.2d 755, 758-759 (Ind. Ct. App. 1991), trans. denied.

Here, at the sentencing hearing, the trial court heard extensive testimony from Norton about her employment history and financial status. Furthermore, Norton does not deny that she received \$5,000 from Baker. See Appellant's Brief at 2-3. The trial court's judgment and sentence order recites that, “[b]ased on the evidence presented, the Court expressly finds [Norton] is financially able to pay restitution.” Appellant's Appendix at 8. Accordingly, we hold that the trial court sufficiently inquired into her ability to pay restitution. See Polen, 578 N.E.2d at 758.

However, Norton is correct, and the State concedes, that the trial court failed to fix the manner of payment. The trial court must identify the manner and time frame in which Norton must pay restitution. Laker v. State, 869 N.E.2d 1216, 1221 (Ind. Ct. App. 2007) (citing Ind. Code § 35-38-2-2.3(a)(5); Garrett v. State, 680 N.E.2d 1, 3 (Ind. Ct.

App. 1997); McGuire v. State, 625 N.E.2d 1281, 1282 (Ind. Ct. App. 1993)). Accordingly, we remand with instructions for the trial court to determine the manner and time frame in which Norton must pay restitution. See id.

For the foregoing reasons, we affirm Norton's conviction for intimidation as a class A misdemeanor, affirm the trial court's restitution order, and remand with instructions for the trial court to fix the manner of payment.

Affirmed in part and remanded in part.

DARDEN, J. and NAJAM, J. concur