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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1586**

State of Minnesota,
Respondent,

vs.

Juan Ortega,
Appellant.

**Filed September 17, 2012
Affirmed
Stoneburner, Judge**

Steele County District Court
File No. 74-CR-10-2556

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, Christy M. Hormann, Assistant Steele County Attorney, Owatonna, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the sufficiency of the evidence to support his conviction of a pattern of stalking conduct, arguing that the state failed to prove beyond a reasonable

doubt that he knew or had reason to know that his estranged wife would feel terrorized or fear bodily harm from his conduct or that she felt such terror or fear. We affirm.

FACTS

There is a history of violence and threats by appellant Juan Ortega toward his estranged wife. In August 2010, the couple had an argument during which Ortega punched wife in the face multiple times. In October 2010, Ortega called wife multiple times in a single day, filling her voicemail box with threats and telling her that she would not see her children again. In November 2010, Ortega repeatedly called wife, threatened to come to the house, threatened to hurt her, and told her to call the police to keep him away, shortly after which he arrived at the house and threw a bottle through a window before police officers arrested him. Wife then obtained an order for protection prohibiting Ortega from having contact with her or their children. She initiated a dissolution action and was granted custody of the children.

On December 10, 2010, while the order for protection was still in place, Ortega called wife 15 or 16 times in 40 minutes. Wife suspected that Ortega had been drinking, told him to call back when he was sober, and hung up on him. Ortega continued to call wife, telling her that he was coming over to her house, that she would have to call the police if she did not want him there, that a restraining order would not stop him from getting to her, and that “it would be [her] ass” if she did not allow him to see their children.

Shortly after the telephone calls began, wife called the police. The officers later testified that wife was nervous and anxious when the police arrived at her home. Wife’s

cell phone and home phone rang consistently while officers were at wife's home, and the caller I.D. information showed that the calls came from Ortega's cell phone or from his girlfriend's home phone. Wife told the officers that, as Ortega continued drinking through the evening, "the calling will only get worse."

When police officers arrived at Ortega's girlfriend's home, Ortega answered the door. He was drinking a beer. He began swearing at the officers and was slurring his speech. Ortega retreated to the second floor of the home, and it took the officers more than ten minutes to arrest Ortega because he refused to come down from the second floor.

After his arrest in December 2010, Ortega was charged with a pattern of stalking in violation of Minn. Stat. § 609.749, subds. 2(1), 5(a) (2010), stalking in violation of Minn. Stat. § 609.749, subds. 2(1), 4(a) (2010), stalking in violation of Minn. Stat. § 609.749, subds. 2(4), 4(a) (2010), and violating an order for protection in violation of Minn. Stat. § 518B.01, subd. 14(c) (2010). A jury found him guilty of all counts. The district court entered a conviction of a pattern of stalking and sentenced Ortega to 57 months in prison. This appeal follows in which Ortega challenges only the conviction of a pattern of stalking.

D E C I S I O N

A. Standard of Review

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court

must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

B. Pattern of Stalking

A person engages in a pattern of stalking when (1) they commit an act listed in Minn. Stat. § 609.749, subd. 5(b) (2010), which includes, as charged in this case, directly or indirectly manifesting an intent to injure the person and making repeated telephone calls, two or more times over the course of five years, (2) the person knows or has reason to know that these actions “would cause the victim under the circumstances to feel terrorized or to fear bodily harm,” and (3) the person’s actions cause such a reaction from the victim. Minn. Stat. § 609.749, subd. 5(a). Ortega argues that the state failed to prove the second and third elements.

To determine whether Ortega knew or had reason to know that his conduct would cause wife to feel terrorized or fear bodily harm, this court must examine the context in which his words were used. *State v. Franks*, 765 N.W.2d 68, 75 (Minn. 2009). “[I]t is proper to view a defendant’s words and acts in the context of the defendant’s relationship with the victim, including evidence of past crimes against the victim.” *Id.* (quoting *State v. Henriksen*, 522 N.W.2d 928, 929 (Minn. 1994)). Ortega argues that the state failed to prove that he expressly threatened wife and that his statements were too vague to be

construed as implied threats. But the state is not required to prove that words or conduct constituted an express threat to support a conviction of a pattern of stalking. *See id.* (“[T]he State does not have to prove that the conduct amounted to an express threat.”).

Wife testified about the August 2010 incident in which Ortega, who had been drinking, punched wife in the face four times, requiring her to seek medical treatment. Wife testified that there were two other prior incidents that were very similar to the one that took place on December 10, 2010. In October 2010, while the children were with Ortega and wife was out of town, Ortega called wife approximately 100 times. He was drunk, and he threatened to take the children, called wife names, and threatened to hurt or kill her. On November 6, 2010, Ortega began repeatedly calling wife again. He got angry when she refused to let him come to her house, and he threatened that he was “gonna take care of [her].” He threatened to “shoot up the house” and told wife that “[h]e didn’t care if the kids were in the way,” and, within seconds, he arrived in wife’s driveway, began yelling at wife, and threw a full bottle of beer through the bedroom window. Wife also testified that Ortega would get angry when he drank and that she understood his threats to mean that he was going to hurt her. She testified that when he told her “that [it] will be [her] ass” if she did not allow him to see the children, she understood this to mean that he was going to come and hurt her.” She testified that she “didn’t feel safe with him around [her] or the kids.”

Considering Ortega’s words and actions on December 10, 2010, in the context of his violent and threatening relationship with wife, a reasonable jury could conclude that Ortega knew or should have known that his words and threatened actions would cause

wife to feel terrorized and/or fear bodily harm. *See* Minn. Stat. § 609.749, subd. 5(a).

Viewing the evidence in the light most favorable to the verdict, the evidence is sufficient to support the jury's determination that Ortega knew or should have known that his words and actions would terrorize wife and cause her to fear bodily harm.

Likewise, in the context of Ortega's relationship with wife, a reasonable jury could conclude that wife, who testified multiple times that she was "scared" by the December 10 phone calls, felt terror or feared bodily harm as a result of the threatening calls. *See id.*

Ortega argues that wife's characterization of her feelings as "scared" does not meet the *Franks* definition of "to feel terrorized." To feel terrorized means "to feel extreme fear resulting from violence or threats." *Franks*, 765 N.W.2d at 74. Wife's testimony and the testimony of the officers who responded to her call demonstrate that wife felt more than simply frightened, threatened, or intimidated and that she had reason to fear bodily harm. *See id.* (determining that "the legislature intended the phrase 'feel terrorized' to mean something more than feeling frightened, threatened, oppressed, persecuted, or intimidated").

Affirmed.