STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1727

State of Minnesota,
Respondent,

vs.

Scott Brandon Schulberg,
Appellant.

Filed August 15, 2011
Affirmed
Ross, Judge

Dakota County District Court
File No. 19HA-CR-09-1891

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

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The district court convicted Scott Schulberg of engaging in a pattern of harassing conduct for making repeated hang-up telephone calls from prison to his former girlfriend,

who was the victim of Schulberg's threatening gun-related, criminal activity that lead to his imprisonment. Schulberg appeals his conviction. He maintains that the trial evidence does not prove that he knew or had reason to know that the victim would feel terrorized or fear bodily harm as a result of his telephone calls or that she actually did feel terrorized or fear harm. Because Schulberg's violence toward the victim provided Schulberg with adequate context to have anticipated the victim's fear and provided the factfinder with adequate context to find actual fear, we hold that sufficient evidence supports the finding that Schulberg engaged in a pattern of harassing conduct.

FACTS

Scott Schulberg and M.S. began a romantic relationship in 2002 that M.S. ended six months later. Schulberg then continued contacting M.S. against her wishes in a series of events that M.S. reported to police. For example, Schulberg broke into M.S.'s house numerous times. He telephoned her repeatedly. He showed up at her home uninvited at all hours. He stole her car. He attempted to run her car off the road. On one occasion, M.S. woke up in the night to find Schulberg standing over her holding a shotgun. On another, she followed suspicious noises and found Schulberg hiding inside a large cupboard in her garage.

In 2004, Schulberg again broke into M.S.'s home. According to M.S., Schulberg dragged her, threw her through a glass table top, struck her, and threatened to kill her. Police arrested Schulberg and a jury convicted him of felon in possession of a firearm, burglary, and making terroristic threats. We affirmed. *State v. Schulberg*, No. A05-860 (Minn. App. Jul. 18, 2006), *review denied* (Minn. Sept. 27, 2006). After his conviction

and commencement of his incarceration, Schulberg began to call M.S. from prison. M.S., alleging fear, reported the calls to police. Eventually the calls stopped and M.S. did not hear from Schulberg for years.

But the silence ended in the course of events that led the state to charge Schulberg, and the district court to convict him, of engaging in a pattern of harassing conduct under Minnesota Statutes section 609.749, subdivision 5(a) (2006). The state presented evidence of the following facts at trial, and whether it supports the conviction is the subject of this appeal.

In January 2009, M.S. listened to a message on her answering machine that she recognized as Schulberg's voice. She immediately called the police. After the investigation, M.S. learned from police that Schulberg had been calling her home regularly and hanging up. The police traced 16 calls from Schulberg's offender identification number at prison to M.S.'s home number. M.S. testified that when she learned this, she felt "[s]cared. Very Scared." She added, "[I] [h]ad absolutely no idea why after all these years he has been in there, and I thought that he was not calling me and having any contact with me anymore, all of a sudden he would be contacting me again. Very scared." She explained, "I'm very scared about what is going to happen when he gets out. . . . [I]t's . . . getting down to that time that he's supposed to be getting out." Describing her fears further, she said "I don't know what he's capable of anymore."

There was no dispute at trial whether Schulberg made the calls; Schulberg wrote a letter to the county attorney admitting that he had. He claimed that he was not really trying to reach M.S., however, but was instead trying to reach her minor daughter. M.S.'s

daughter also testified at trial. She explained that she was 11 years old when Schulberg dated her mother. She remembered "[b]eing very scared and worried about [her] mom's life and [her own] life, and why this guy kept breaking into [their] house and why the cops were at [their] house so often and why he wouldn't go away." When she learned that Schulberg was calling again, she "was very scared and [she] just wanted it to go away."

The district court found that the state proved beyond a reasonable doubt that Schulberg engaged in a pattern of harassing conduct. It concluded that the evidence proved that M.S. felt extreme fear from the telephone calls and that the number and nature of the calls were sufficient to infer that Schulberg intended to harass M.S. and knew or should have known that they would cause her extreme fear. The district court sentenced Schulberg to 15 months in prison.

Schulberg appeals.

D E C I S I O N

Schulberg argues that the evidence is not sufficient to support his conviction for engaging in a pattern of harassment. His arguments fail.

We analyze insufficient-evidence claims by determining whether the evidence, when considered in the light most favorable to the conviction, could reasonably support the verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). In doing so, we assume that the factfinder believed the state's witnesses and evidence and disbelieved conflicting testimony. *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995). To affirm Schulberg's conviction of engaging in a pattern of harassing conduct, we must find evidence that could lead a reasonable factfinder to believe that (1) he committed two or

more predicate offenses, (2) he knew or had reason to know that his conduct would cause M.S. "to feel terrorized or to fear bodily harm" under the circumstances, and (3) his conduct did cause M.S. to feel terrorized or to fear bodily harm. *See* Minn. Stat. § 609.749, subds. 5(a), (b) (2006).

Schulberg concedes that the state proved the first element—two or more predicate offenses. He contends that the other two elements are unproven. *See State v. Richardson*, 633 N.W.2d 879, 887 (Minn. App. 2001) (requiring proof beyond a reasonable doubt of all elements of the pattern of harassing conduct statute).

We first address Schulberg's argument that the evidence is insufficient to show that he knew or had reason to know that his telephone calls would cause M.S. to feel terrorized or fear harm. "Terrorized" means "to feel extreme fear resulting from violence or threats." *State v. Franks*, 765 N.W.2d 68, 74 (Minn. 2009). We reject Schulberg's assertion that "the very nature of the calls were so innocuous" that he could not have known that they would terrorize M.S. The factfinder may consider a defendant's conduct in the context of his relationship with the victim, "including evidence of past crimes against the victim." *Id.* at 75 (relying on the defendant's long history of terrorizing his victim in deeming letters sent from prison to be terrorizing).

We have no difficulty finding support for the first challenged element in the context of what Schulberg knew M.S. had experienced in the relationship. Schulberg made the 16 telephone calls in the aftermath of his violent and expressly threatening relationship with M.S. and with no apparent reason unrelated to the relationship. A victim's logical connection between unwelcome telephone calls and prior terroristic

behavior must be obvious to the caller when he makes them during the incarceration that resulted specifically from that behavior. Reason dictates that fear is the immediate (and apparently intended) emotion conjured by a stalker, harasser, intruder, attacker who suddenly resumes contact with his victim from prison. Being incarcerated for breaking into M.S.'s home and threatening to kill her, Schulberg knew that repeatedly telephoning her from prison would tend to remind her of the terrifying circumstances leading to the imprisonment. At the very least, the factfinder was free to reason so. We hold that the evidence supports the finding that Schulberg knew or should have known that his telephone calls would terrorize M.S.

Schulberg puts undue emphasis on the fact that his calls were mostly hang-up calls. Under the harassment statute, conversation is unnecessary. *See* Minn. Stat. § 609.749, subd. 2 (stating that harassment includes "repeatedly mak[ing] telephone calls . . . whether or not conversation ensues"). And some threats require no words. *See State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996) (recognizing that act of leaving dead animal on victim's property conveyed a threat to injure, kill, or commit other crime against victim); *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989) (holding that a defendant's intent to cause a victim to fear bodily injury can be inferred from other behavior where there is a history of domestic abuse). Far from mitigating the terrorizing nature of his calls, hanging up allowed Schulberg to prolong his ongoing electronic intrusion into M.S.'s home and life without immediate detection, and once he was detected, he must have expected that M.S. would investigate the calls, discover that he made others, and become increasingly fearful about the repetitious nature of them.

Meritless best describes Schulberg's assertion that his conduct should be deemed non-threatening because he purportedly was attempting to contact M.S.'s daughter, not M.S., when he made his repeated calls. Two obstacles defeat his assertion. First, the assertion carries the implausible premise that a previously victimized mother would be *less* terrorized (rather than *more* terrorized) on learning that after years in prison her soon-to-be-released violent stalker has just turned his attention from her to her minor daughter. Second, the facts belie it. M.S.'s daughter testified that she too was afraid of Schulberg, and harassers are not limited to sole victims. *Franks*, 765 N.W.2d at 70–71 (holding that letters sent from Franks to the victim, her friend, and her parents together constituted a pattern of harassing conduct). That Schulberg—a 50-year-old prison inmate who previously terrorized M.S.—was supposedly attempting to reach M.S.'s then 15 or 16-year-old daughter adds no weight to his argument that the evidence was insufficient to prove his intent to terrorize M.S.

Even less persuasive is Schulberg's contention that the evidence could not establish that M.S. actually felt terrorized by his telephone calls. To feel terrorized means more than feeling "frightened, threatened, oppressed, persecuted, or intimidated." *Id.* at 74 (quotation omitted). In *Franks*, the victim's testimony that she felt "very scared" about her estranged husband's harassing conduct from prison was sufficient evidence to satisfy this element. *Id.* at 77. M.S. similarly testified that Schulberg's calls made her "very scared." She said that she fears for herself and her family. She considered moving and

installed an extensive security system. This testimony constitutes sufficient evidence that M.S. felt terrorized.

Affirmed.