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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1581**

State of Minnesota,
Respondent,

vs.

Juan Ortega,
Appellant.

**Filed November 19, 2012
Affirmed
Larkin, Judge**

Steele County District Court
File No. 74-CR-10-2325

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

Daniel A. McIntosh, Steele County Attorney, James S. Cole, Assistant County Attorney,
Owatonna, Minnesota (for respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of stalking, arguing that the evidence was insufficient to support the conviction. We affirm.

FACTS

Respondent State of Minnesota charged appellant Juan Ortega with felony stalking and first-degree criminal damage to property. The case was tried to a jury. Ortega stipulated that he has a qualified domestic-violence-related-offense conviction, which enhanced the stalking charge to a felony-level offense.

At trial, the state called A.R., who was in a relationship with Ortega at the time of the offense. A.R. and Ortega resided together in Owatonna. In the early morning hours of October 31, 2010, Ortega and A.R. got into an argument. During the argument, Ortega threw some of A.R.'s clothes onto the yard. A.R. left the residence and stayed with Ortega's brother for the night.

The following day, A.R. called the police to escort her to the residence to collect her belongings. She met Owatonna police officer John Bata and his partner at the residence. The police officers had to push open the door to the residence because a refrigerator had been placed behind the door. Once inside, A.R. saw that numerous items of her property had been damaged, including her clothing, hair straightener, blow dryer, television, receiver, computer, and printer. And, she found a kitchen knife upstairs under a bed. A.R. testified that seeing her damaged property made her "mad" and "pissed off."

A.R. testified that Ortega was in the house the entire time she and the police were there to sort and collect her belongings, but that she did not have any interaction with him. She further testified that at one point, she was upstairs with a police officer and told the officer to keep Ortega downstairs because she was “obviously upset and mad about the situation.” She later clarified that she wanted the police to keep Ortega downstairs because she “was angry and mad about the situation” and “didn’t want any further confrontation.”

Officer Bata testified that upon entering the residence, they discovered that the kitchen was a mess and things had been “kind of thrown around.” Officer Bata testified that at this point, A.R. “seemed frightened, turned sort of pale and was very nervous.” He further testified that A.R. pointed out a knife holder that was missing a number of knives, gasped, and stated “Oh, my God, those knives are missing.”

Officer Bata testified that A.R. went upstairs to collect her belongings, but that he eventually went upstairs to check on her. He saw A.R. “standing at the top of the stairs crying and holding her hand over her mouth.” He walked into a bedroom and observed “a large amount of clothing that was damaged and some electronics and other personal belongings were damaged.” Officer Bata testified that A.R. was “very upset,” was “crying and sobbing” and was not able to respond to his questions. He testified that when he went back downstairs to talk to his partner, A.R. “was very adamant that she did not want Mr. Ortega to come upstairs and requested that I ensure that he doesn’t come upstairs,” and that “she also requested that we get him out of [there].” Officer Bata observed that when she made this request, she was “[v]ery shaken, nervous, and still

crying.” Officer Bata described A.R.’s overall demeanor while she was upstairs as “very upset” and he testified that “she appeared to be frightened.”

The state rested, and Ortega did not call any witnesses. The district court permitted the state to amend the complaint to add lesser-included offenses of gross-misdemeanor and misdemeanor criminal damage to property. Next, the district court granted Ortega’s motion for a judgment of acquittal on the first-degree property damage charge. The jury found Ortega guilty of stalking and gross-misdemeanor property damage. The district court sentenced Ortega to serve 24 months in prison. This appeal follows.

D E C I S I O N

Ortega challenges the sufficiency of the evidence to sustain his conviction of stalking. He argues that one of the elements the state had to prove was that his conduct caused A.R. to feel “frightened, threatened, oppressed, persecuted, or intimidated.” Ortega further argues that because A.R. testified that his conduct merely made her feel “upset,” “angry,” and “mad,” the state failed to prove his conduct caused the requisite effect on her. Ortega therefore argues that his stalking conviction must be reversed.

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 a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume “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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

The elements of stalking are (1) a person directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act, (2) the person knows or has reason to know the conduct would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and (3) the person’s conduct causes this reaction on the part of the victim regardless of the relationship between the person and the victim. Minn. Stat. § 609.749, subs. 1, 2(1) (2010).

Ortega argues that A.R.’s testimony regarding her reaction to his conduct, namely that she was “upset,” “angry,” and “mad,” “is not contemplated by the plain meaning of the stalking statute.” Specifically, he argues that A.R.’s “primary reaction was anger” and that anger is not included within the meaning of “frightened,” “threatened,” “oppressed,” “persecuted,” or “intimidated” under Minn. Stat. § 609.749, subd. 1.

However, Ortega fails to consider Officer Bata’s testimony. Officer Bata testified that after A.R. discovered that her property was damaged, she was “crying and holding her hand over her mouth.” She told Officer Bata to make sure Ortega did not come upstairs and was very “shaken, nervous, and still crying” when she made the request. Officer Bata further testified that A.R. “appeared to be frightened.” The jury was free to consider Officer Bata’s testimony regarding A.R.’s reaction to the damaged property

when determining the effect of Ortega's actions on A.R. *See State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980) (“[It] is well-settled in Minnesota that it is the province of the jury to determine the credibility and weight to be given to the testimony of any individual witness.”). Thus, the evidence was sufficient for the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, to reasonably conclude that A.R. was frightened. We therefore do not disturb the verdict.

Affirmed.