IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BRADLEY CLINTON JARVIS, Appellant.	No. 42174-7-II UNPUBLISHED OPINION

Hunt, J. – Bradley Clinton Jarvis appeals his jury trial convictions for felony stalking (domestic violence) with a domestic violence sentencing aggravator, fourth degree assault,[1] and two counts of violating a protection order prohibiting contact with his former girl friend, Larisa Turville. Jarvis argues that (1) the trial court erred when it admitted under ER 404(b) evidence of four previous, uncharged assaultive incidents; (2) the trial court erred when it denied his motion to sever the assault charge from the other charges; and (3) the evidence is insufficient to support the stalking conviction. We affirm.

[1] The jury found Jarvis guilty of fourth degree assault, instructed as a lesser included offense of the originally charged second degree assault by strangulation.

FACTS

I. Crimes

Bradley Clinton Jarvis and Larisa Turville began dating in January 2008. Shortly thereafter, Jarvis would periodically fly into "rage[s]," during which he berated Turville, called her obscene names, grabbed and/or pushed her, and sometimes threw glass or ceramic objects at her. II Verbatim Report of Proceeding (VRP) at 59. Afterwards, Jarvis would apologize and assure Turville that it would not happen again. Turville did not report these incidents to the police and continued her relationship with Jarvis, "hop[ing]" that this behavior would stop. II VRP at 74.

Eventually Turville ended the relationship after a September 2009 incident at her Kitsap county "beach home"[2]; but she did not call the police. II VRP at 75. On October 20, 2009, however, she sought a protection order from the King County District Court prohibiting Jarvis from contacting her. In her statement supporting her October 20, 2009 protection order petition, Turville described the September 2009 incident, but she did not allege that Jarvis had grabbed her by the neck. The court issued the protection order on November 2, 2009, effective for one year.

Despite the protection order, Jarvis continued to call and to send text messages to Turville; he also tried to contact her through friends, her children, and his children. Turville placed a 90-day block on her phone; but "immediately" after it expired, she started receiving "multiple messages a day from" Jarvis. II VRP at 97. From December 28, 2009, to January 1, 2010, she received numerous text messages from him, sometimes 8 to 10 a day; she received more text messages from him between January 14 and 17. One of the text messages she received

[2] Turville's primary residence was in Bellevue.

on January 1 was a picture of Jarvis's erect penis with the message, "Just in case you forgot what it looks like." II VRP at 105. Turville was "surprised," "scared," and "frightened" by these messages, and she reported them to law enforcement. II VRP at 104.

Turville reinstated the block on her phone, but the investigating officers persuaded her to remove it so they could "document that he was still trying to contact" her. II VRP at 107. On January 14, Jarvis sent Turville two text messages the first at 9:24 pm and the second at 11:42 pm.[3] On January 15, he sent seven text messages, the first shortly after midnight, three between 3:00 and 5:00 pm, and three more between 9:00 pm and shortly after 11:00 pm.[4] On January 16, he sent one text message.[5] On January 17, he sent two messages, one at 6:49 pm, the other at 7:15 pm.[6] Turville also found these messages to be "very frightening" because "they all sound[ed]

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[3] These messages said:

> "hi baby. Playing in a pool league and my phone went deadhad a feeling you called me. xo. Bradley"
> "Had a crazy feeling I was going to see you tonight"

Ex. 17. We quote these cellular telephone text messages verbatim.

[4] These messages said:

> "miss me a little?"
> "Hi [Turville], miss you baby. Lots of dreams of you lastnight. Hope to chat soon. Lu Bradley"
> "I know u miss me darlini feel it in my heart."
> "U coming to the beach house with the kiddies this weekend baby."
> "Im worried about u"
> "Im the one person that will always be there to protect youremember that baby"
> "love yousweet dreams"

Ex. 17.

[5] This messages said: "I do miss u sohope u realize that. Don't know what else to say except that I love you. Have nothing left. xo" Ex. 17.

[6] These messages said: "Hey baby. Kisses," and "I want to Make love to you" Ex. 17.

like [they were] in contact" and in an ongoing relationship. II VRP at 110. She was alone in her Kitsap County home and "was afraid [Jarvis] was going to come over and try to get in the house," so she called the sheriff's office at about 9:00 pm on January 17. II VRP at 112.

Kitsap County deputies Brian Petersen and John Roy Stacy responded. Turville, "obviously upset" and "obviously intoxicated," told Petersen that Jarvis had assaulted her several times during their relationship and that she had ended the relationship in September 2009. II VRP at 198. She showed Petersen the previously described text messages, and he listened to voicemails that Jarvis had left on her phone. Turville told Petersen that she was "concerned or afraid . . . that [Jarvis] was going to come to her house"; Petersen observed that "[s]he kept looking over her shoulder to see if he was going to be coming in the door." II VRP at 204. Petersen drove seven or eight miles to Jarvis's house; Jarvis confirmed that he had left voicemail messages and sent texts to Turville, and Petersen arrested him.

II. Procedure

The State charged Jarvis with felony stalking with domestic violence and sexual motivation allegations; second degree assault by strangulation with a domestic violence special allegation, based on the September 2009 assault; and two counts of gross misdemeanor violation of a court order,[7] both with domestic violence special allegations.[8] For the stalking and second degree assault charges, the State also alleged a domestic violence sentencing aggravator under

[7] Count IV was related to Jarvis's attempts to contact Turville "[o]n or between January 14, 2010 and January 15, 2010." CP at 109. Count V was related to Jarvis's attempts to contact her on January 17, 2010.

[8] The State also charged Jarvis with bail jumping. The trial court severed this count before trial; this charge is not at issue on appeal.

former RCW 9.94A.535(3)(h) (2008).

A. Pretrial ER 404(b) Evidence and Severance Motions

Before trial, the State moved to admit evidence of four uncharged incidents that had occurred between Turville and Jarvis during their relationship: the "South Beach incident," the "[l]ocked out of the beach house incident," the "Buddha statue incident," and the "Whaling Days incident." CP at 27-29. The State argued that these earlier incidents were relevant (1) to the reasonableness of Turville's fear that Jarvis would harm her, an element of the stalking charge; and (2) to Turville's delay in reporting the exact circumstances of the charged assault,[9] which was relevant to her "credibility" and whether she was "embellishing" the assault allegation. CP at 34; I VRP at 22.

The trial court admitted these four incidents under ER 404(b) for purposes of establishing (1) "the element of fear and explaining the victim's conduct"; and (2) that Jarvis harassed Turville either (a) with the intent to frighten, intimidate, or harass her, or (b) under circumstances in which he should have reasonably known that she was afraid, intimidated, or harassed. I VRP at 19. Jarvis then moved sever the assault charge from the other charges. The trial court denied this motion.

B. Trial Testimony

Turville, her nanny/household manager Julie Berry, several officers involved in the

[9] Although the October 2009 protection order was based, at least in part, on the September 2009 assault, she had not alleged in her petition that Jarvis had attempted to strangle her during this assault. Instead, the attempted strangulation did not come to light until sometime during the 2011 police investigation.

investigation, and one of Turville's friends, testified for the State. Turville testified that she had started dating Jarvis in January 2008. She then testified about the four uncharged incidents that the trial court had admitted under ER 404(b).[10] Turville acknowledged that she did not report any

[10] The first incident occurred in February 2008, while they were vacationing in South Beach, near Miami, Florida. Jarvis had apparently became "very, very angry" when he found Turville talking to another man at the hotel bar; swore at the man; "grabbed" [Turville] by her arm; and, while "squeezing" her arm, "drug" or led her "up the length of the pool and into the bedroom." II VRP at 55. Inside their room, he followed her up the staircase, screaming at her and calling her obscene names; and he threw two glass water bottles at her, at least one of which shattered and the glass cut her feet. Jarvis's "rage" "scared" and "shocked" Turville. II VRP at 56. When she started screaming, hotel security officers entered the room and removed Jarvis. Jarvis returned to the room around 5:00 am the next morning, cried, apologized, and told her it would never happen again.

The second incident she described occurred at her Kitsap County home sometime in the "[m]iddle" of their relationship. II VRP at 59. She told Jarvis that she did not want to go out with him and his friends and "asked him not to come back if he had been drinking." II VRP at 59. When he returned to her house, it was apparent that he had been drinking. She let him in, but "he started a rage at [her]" and chased her through the house, "pointing his fingers in [her] face," "grabb[ing]" her arms, and calling her obscene names. II VRP at 59-60. He left when she threatened to call the police. But after she locked the door behind him, he walked around the house looking in the windows and knocking on the doors and windows, telling her to let him back in. This "scared" Turville; so she shut herself in her bedroom and closed the shades. II VRP at 61. He then got into his truck and "held the horn down" for about 45 minutes. II VRP at 62. Eventually, he "passed out" in his truck. II VRP at 62.

The third incident occurred at her Bellevue home, also in the "[m]iddle" of their relationship. II VRP at 69. After spending the day in Seattle with their children, Jarvis and Turville were drinking that evening. Jarvis became upset with Turville and started to accuse her of "swaying his children against him." II VRP at 64. Believing that Jarvis was "intoxicated" and sensing that he she was "escalating into . . . another big rage thing," she called Berry, and asked her to come over. II VRP at 64-65. Jarvis then chased Turville through the house, screamed at her, and called her obscene names in front of the children. Turville and Jarvis went into her bedroom, he closed and locked the door and smashed a three-foot-tall ceramic Buddha statue at her feet. When she "scream[ed]" at him to stop, he grabbed her by the arms, "slammed" her down on the bed, and "scream[ed]" at her "with his finger in [her] face." II VRP at 68. Eventually Turville was able to leave the bedroom and went to the kitchen. By this point Berry had arrived. Jarvis came out of the bedroom and went back into the bedroom a few times.

Berry also testified about this third incident: She had seen the broken statue in the bathroom adjoining Turville's bedroom, Jarvis had also broken one of the children's school projects, Turville was upset and had been crying when she (Berry) arrived, and Jarvis had

of these incidents to the police. She explained that he had always apologized after the incidents and that she "always kind of held out hope when he said he wouldn't do it again, that he wouldn't." II VRP at 74.

Turville also testified about the charged assault. In late September 2009, she was at her Kitsap County home with her children, Jarvis, his children, some friends, their children, and some staff. She had been taking Xanax because she was recovering from a medical procedure; both she and Jarvis had been drinking. Jarvis apparently became angry that Turville's friend had brought her boyfriend to the house. When Jarvis started to "rant and rage at [Turville]," Turville told Jarvis to leave. II VRP at 77. Instead of leaving, he followed her around the kitchen, "scream[ed] at [her]," and threw off her deck some large terracotta pots, which broke in the yard below. II VRP at 77. Turville's groundskeeper objected to Jarvis's destroying the flower pots; Jarvis "grabb[ed]" the groundskeeper by the back of his jacket and "drag[ged]" him through the

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continued to berate Turville and follow her around even after Berry arrived. Jarvis's behavior concerned Berry enough that she stayed at Turville's house overnight to ensure the children "were okay." II VRP at 187. The next day, Jarvis told her that he did not remember the previous evening's events.

The fourth incident occurred during the Whaling Days event in Silverdale. Turville and Jarvis had taken her boat from her Kitsap County beach house to the event and had met some friends at the docks. Jarvis appeared to think that some of his friends were being "too flirty" with Turville and wanted them off the boat. II VRP at 70. One of his friends noticed that he was becoming angry and took him into town. When Jarvis returned from town and "found" Turville visiting a couple on their nearby boat, he was "very, very angry" that she had not stayed on her own boat. II VRP at 71. He began "yelling" at her in front of the other couple and "took [her] by the arm and . . . marched [her] down the dock back towards [her] boat." II VRP at 71. Turville locked herself inside the boat while Jarvis continued to rage outside and eventually broke the "locking mechanism" on the door handle. II VRP at 72. Turville stayed inside her boat for about two hours until she had to address issues with another boat. Jarvis became "mad" at Turville when she said she did not want them to tie up to her boat; he called her a "b*tch." II VRP at 73.

kitchen. II VRP at 78. Jarvis then went into the garage and "was throwing stuff out of the garage" into the driveway while he continued to scream. II VRP at 78.

When Turville entered the garage to get Jarvis to leave, he "grabbed" her wrists, pulled her hands above her head, and "grabbed" her neck with one hand, lifting her up onto her "tippy toes." II VRP at 78, 80. She was unable to breathe for 5 to 10 seconds. When she managed to get away, Jarvis followed her back into her bedroom, where he "grabbed" her arms and "slammed [her] down on the bed," screaming at her. II VRP at 80. She "plead[ed]" with him to calm down and to take his children and leave. II VRP at 80. Eventually they went outside. When she continued to tell him to leave, he "smashed" or "slap[ed]" the "top of [her] hand." II VRP at 81. Turville's friend's young child came outside and "scream[ed]" at Jarvis to let go of Turville and to leave. II VRP at 81. Jarvis "just sort of stopped out of the rage," punched the hood of his truck, gathered his children, and left. II VRP at 81.

Turville suffered bruising to her neck, leg, arms, and hand. Her doctor photographed the injuries, and she showed the marks to her friend Scott Morris shortly after the incident.[11] On cross-examination, Turville acknowledged that this was the "scariest" or "worst" incident with Jarvis. II VRP at 160. She testified that she had not called the police because the children were there and she "was just hoping it was going to settle down." II VRP at 91. She also testified, however, that she had petitioned for a protection order on October 20, 2009, and that she

[11] Morris testified that he had seen Turville at the end of September or early October 2009; that she seemed "visibly shaken"; and that she had showed him bruising on her hand, neck, and chest. III VRP at 219. Morris could "see the hand mark or where the hands had been or where the abrasion had taken place" on Turville's neck, and he could tell that the marks on her neck were from a hand. III VRP at 221.

believed that she told one of the officers she spoke to in January 2010 about the September 2009 choking incident.

Turville next testified about Jarvis's continued attempts to contact her after the protection order was in place. She was "surprised," "scared," and "frightened" when she received the messages after the 90-day block ended: She was concerned Jarvis would try to get into her Kitsap County home and she was concerned for her and her children's safety. II VRP at 104. She found the messages particularly "scare[y]" because they made it sound like she was still seeing him, which was not the case,[12] and "made [her] feel like it was never going to stop."[13] II VRP at 106. When asked on cross-examination whether she was "afraid . . . that he was going to insert himself back into [her] life," Turville responded, "I don't know what he could have done." II VRP at 173.

Deputy Petersen testified that when he and Deputy Stacy responded to Turville's call on January 17, 2010, Turville told him that Jarvis had assaulted her several times during their relationship and that she had ended the relationship in September 2009. Although Turville mentioned the September 2009 incident, Petersen was not sure whether she mentioned that Jarvis had tried to choke her during that assault. Turville was "concerned or afraid . . . that [Jarvis] was

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[12] II VRP at 171.

[13] Turville further explained these messages' effect on her:

> Like, you know he was going to continue to sort of live in his reality that we were going to be together, you know. It made me feel afraid, it made me feel panicked that, how are we going to stay protected? How were the kids and I going to be safe from him? And especially that long after, you know, no contact still trying to contact me.

II VRP at 106.

going to come to her house, even while [the deputies] were there." II VRP at 204. But Petersen did not recall Truville's saying specifically that she was afraid Jarvis would hurt her, someone else, or destroy property. Petersen also testified he had read the previously described text messages and had listened to some of Jarvis's voicemails on Turville's phone.[14] Kitsap County Sheriff's Detective Chad Birkenfeld testified that he had spoken with Turville on March 24 and April 12, 2011, and that Turville had told him about the four prior incidents and the charged assault "where she was choked." III VRP at 228.

Jarvis, the sole defense witness, admitted having sent text messages to Turville; but he asserted that they had maintained contact through a "mutual friend," Lupe McGuire, and that Turville had told McGuire that she (Turville) loved him, missed him, and wanted contact with him. III VRP at 237. Despite being aware of the protection order and that Turville never responded, he had continued to contact her because he thought she would contact him. He admitted that (1) he knew he was violating the protection order when he attempted to contact her, (2) he would drive by Turville's Kitsap County home on his way home from work, and (3) he would sometimes text her and tell her that he had just passed by her house and was thinking of her.

Jarvis denied having assaulted Turville in September 2009. Instead, he testified that she had been intoxicated and falling down, that he had tried to sober her up and had eventually put her

[14] Petersen noted that "some of [the voicemails] were kind of well-wishes" and some "were [Jarvis] telling [Turville] that he loved her" or missed her [or that] he wanted to see her. II VRP at 199. In one voicemail, Jarvis said "he had driven by her house." II VRP at 199. Jarvis also said "he called every so often to see if his phone had been unblocked from calling her phone." II VRP at 199.

to bed, and that she had accosted him and eventually tried to hit him after she woke up about an hour later. He admitted that, before he left Turville's home with his children, he had yelled at Turville, argued with her, called her names, used "coarse language," had "some physical contact" with her, and grabbed her arms when she tried to hit him. III VRP at 242. But he denied attempting to choke her. He also admitted that they had a "volatile relationship" that was "up and down" and that there was too much drinking involved. III VRP at 243.

C. Jury Instructions; Verdict

After the parties rested, the trial court instructed the jury that it was to decide each count separately.[15] It instructed the jury on each offense, including felony stalking:

> A person commits the crime of stalking when, without lawful authority, he or she intentionally and repeatedly harasses a second person, *placing that person in reasonable fear that the first person intends to injure her*, either with the intent to frighten, intimidate, or harass, or under circumstances where the first person knows or reasonably should know that the second person is afraid, intimidated, or harassed; and the first person violated a protective order protecting the second person.

CP at 185 (Instruction 7) (emphasis added). The "[t]o convict" instruction for this felony stalking count also required the jury to find beyond a reasonable doubt that "Turville reasonably feared that the defendant intended to injure her." CP at 192 (Instruction 14). The trial court also instructed the jury on second degree assault by strangulation charge, the lesser included offense of fourth degree assault, and violation of a court order.

In addition, the trial court gave the jury Jarvis's proposed limiting instruction:

[15] Instruction 6 stated: "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." CP at 184.

> Certain evidence has been admitted in this case for only a limited purpose. The evidence of acts of Mr. Jarvis occurring prior to September 2009 may be considered by you only *for the purpose of determining the credibility of the alleged victim* and the reasonableness of her fear. You may not consider it for any other purpose.[16] Any discussion of the evidence during your deliberations must be consistent with this limitation.

CP at 209 (Instruction 30) (emphasis added).

The jury found Jarvis guilty of felony stalking with the aggravating circumstance, the lesser included offense of fourth degree assault, and two counts of violation of a court order. The jury also found by special verdict the aggravating factor that the felony stalking was part of an ongoing pattern of abuse. Jarvis appeals his convictions.

ANALYSIS

I. ER 404(b) Evidence Properly Admitted

Jarvis first argues that the trial court erred in admitting the four prior uncharged incidents under ER 404(b) to establish Turville's credibility because (1) Turville was not attempting to recant her allegations, to placate her abuser in an effort to avoid repeated violence, or to minimize the degree of violence when discussing the incident with others; and (2) therefore, *State v. Magers*, 164 Wn.2d 174, 189 P.3d 126 (2008), and *State v. Grant*, 83 Wn. App. 98, 920 P.2d 609 (1996), do not apply. Jarvis also argues that the trial court erred in allowing the State to use these uncharged incidents to establish that Turville's fear was reasonable because the uncharged incidents were unduly prejudicial and there was other evidence available to prove this element. These arguments fail.

[16] Notably, the limiting instruction did not allow the jury to consider the prior, uncharged incidents for purposes of the sentencing aggravators.

A. Standard of Review

We review for abuse of discretion a trial court's decision to admit evidence under ER 404(b). *State v. DeVincentis*, 150 Wn.2d 11, 17, 74 P.3d 119 (2003); *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002). A trial court abuses it discretion "if it is exercised on untenable grounds or for untenable reasons." *Thang*, 145 Wn.2d at 642. ER 404(b) prohibits admitting "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith." "This prohibition encompasses not only prior bad acts and unpopular behavior but any evidence offered to 'show the character of a person to prove the person acted in conformity' with that character at the time of a crime." *State v. Foxhoven*, 161 Wn.2d 168, 175, 163 P.3d 786 (2007) (emphasis omitted) (quoting *State v. Everybodytalksabout*, 145 Wn.2d 456, 466, 39 P.3d 294 (2002)).

Nevertheless, the rule "is not designed 'to deprive the State of relevant evidence necessary to establish an essential element of its case,' but rather to prevent the State from suggesting that a defendant is guilty because he or she is a criminal-type person who would be likely to commit the crime charged." *Foxhoven*, 161 Wn.2d at 175 (quoting *State v. Lough*, 125 Wn.2d 847, 859, 889 P.2d 487 (1995)). Thus, ER 404(b) states that such evidence is admissible for other purposes, such as proof of motive, plan, or identity.

B. Credibility

Division One of this court has held that prior acts of domestic violence are admissible for credibility purposes when the victim made prior statements about the assault that may have appeared inconsistent with her trial testimony. *Grant*, 83 Wn. App. at 106-07. Our Supreme Court considered a similar issue in *Magers*, quoting with approval Karl Teglund's discussion of *Grant*:

> [T]he defendant was charged with assaulting his wife[.] [T]he defendant's prior assaults against his wife were admissible on the theory that the evidence was "relevant and necessary to assess [the victim's] credibility as a witness and accordingly to prove that the charged assault actually occurred." . . . "The jury was entitled to evaluate her credibility with full knowledge of the dynamics of a relationship marked by domestic violence and the effect such a relationship has on the victim."

Magers, 164 Wn.2d 186 (some alterations in original) (quoting 5D Karl B. Tegland, Washington Practice: Courtroom Handbook on Washington Evidence ch. 5, (2007-08) at 234-35 (quoting *Grant*, 83 Wn. App. at 106, 108)). The *Magers* court concluded that prior acts of domestic violence involving the defendant and the victim are admissible to assist the jury in judging the credibility of a recanting victim. *Magers*, 164 Wn.2d at 186.

Here, Jarvis's prior acts of domestic violence against Turville were relevant to her state of mind when she described the September 2009 incident in her October 2009 protection order petition, in which she did not mention strangulation, and when she later spoke to police during the 2011 investigation of the stalking incident and apparently reported for the first time that Jarvis had attempted to strangle her during the charged September 2009 assault. Although Turville did not recant statements like the victim in *Magers*, similar to the circumstances in *Grant*, the prior

incidents were relevant to show why her specific allegations may have changed over time and why she initially did not allege strangulation—an inconsistency on which Jarvis relied in closing argument.

We see no meaningful distinction between admitting prior domestic violence evidence to explain a victim's recantations and admitting such evidence to explain a victim's delay in reporting specific facts about a charged crime of domestic violence. Thus, under *Magers* and *Grant*, the evidence of the prior assaults was admissible under ER 404(b) to help the jury assess Turville's credibility.[17] We hold that the trial court did not err in admitting the ER 404(b) evidence for this purpose.

C. Reasonable Fear

Jarvis also argues that the ER 404(b) evidence was overly prejudicial to the stalking charge because there was other evidence that could have established the reasonableness of Turville's fear. Specifically, he asserts that evidence of his numerous protection order violations, including telephone records, the messages themselves, and other witnesses to the charged assault, would have been sufficient to establish Turville's reasonable fear. We disagree. Although other evidence was relevant to Turville's reasonable fear, evidence demonstrating that the charged

[17] Jarvis also argues the trial court's allowing this evidence was inconsistent with our decision in *State v. Cook*, in which we held that the jury could not consider such prior misconduct "'for the generalized purpose of assessing the victim's credibility.'" Br. of Appellant at 17 (quoting *State v. Cook*, 131 Wn. App. 845, 851, 129 P.3d 834 (2006), *overruled by Magers*)). Two years later, however, our Supreme Court in *Magers*, specifically rejected this approach, "at least insofar as *evidence of prior domestic violence* is concerned." 164 Wn.2d at 185 (emphasis added). Jarvis also argues that the limiting instruction was incorrect under *Cook*. But *Magers* effectively overruled our decision in *Cook*; thus, it is no longer controlling. Moreover, because Jarvis proposed this limiting instruction, he invited any resulting instructional error; therefore, he cannot raise this issue on appeal. *State v. Henderson*, 114 Wn.2d 867, 869-70, 792 P.2d 514 (1990).

assault was not just an isolated event provided additional context within which the jury could evaluate whether Turville's fear was reasonable, particularly when Jarvis was disputing the charged assault. Accordingly, we hold that the trial court did not err in admitting the uncharged prior incidents for this purpose.

II. Severance

Jarvis next argues that the trial court erred in denying his motion to sever trial of the assault charge from trial of the felony stalking and protection order violation charges. Again, we disagree.

We review for manifest abuse of discretion a trial court's denial of a CrR 4.4(b) motion to sever multiple offenses for trial. *State v. Kalakosky*, 121 Wn.2d 525, 537, 852 P.2d 1064 (1993); *State v. Bythrow*, 114 Wn.2d 713, 717, 790 P.2d 154 (1990). Joinder of offenses carries the potential for prejudice if the defendant may have to present separate, possibly conflicting, defenses; the jury may infer guilt on one charge from evidence of another charge; or the cumulative evidence may lead to a guilty verdict on all charges when, if considered separately, the evidence would not support every charge. *Bythrow*, 114 Wn.2d at 718.

In determining whether the potential for prejudice requires severance, a trial court must consider (1) the strength of the State's evidence on each count, (2) the clarity of defenses as to each count, (3) the court's instructions to the jury to consider each count separately, and (4) the admissibility of evidence of the other charges even if not joined for trial. *State v. Russell*, 125 Wn.2d 24, 63, 882 P.2d 747 (1994), *cert. denied*, 514 U.S. 1129 (1995).[18] Fifth, a defendant

[18] *See also State v. Sanders*, 66 Wn. App. 878, 885, 833 P.2d 452 (1992) (such factors may "offset or neutralize the prejudicial effect of joinder"), *review denied*, 120 Wn.2d 1027 (1993).

seeking severance has the burden of demonstrating that a trial involving all counts would be so manifestly prejudicial as to outweigh the concern for judicial economy. *Bythrow*, 114 Wn.2d at 718. Jarvis fails to meet this burden.

We do not consider the first and second factors because Jarvis presents no argument related to the strength of the evidence or the clarity of defenses for each count.[19] RAP 10.3(6). As for the third factor, the trial court instructed the jury to consider each count separately and that its verdict on one count should not control its verdict on any other count. The evidence of each count was sufficiently distinct that the jury could follow this instruction, and we presume the jury followed the trial court's instructions. *State v. Johnson*, 124 Wn.2d 57, 77, 873 P.2d 514 (1994). Jarvis not only fails to overcome this presumption, but also the record supports the

[19] Nevertheless, we note that these factors weigh against severance because (1) there was sufficient evidence to support each charge independently and the evidence for each charge was distinct enough to allow the jury to discriminate between each charge; and (2) the defenses to each count were clear—(a) his defense to the assault was a denial, (b) his defense to the stalking charge was that his behavior had not placed Turville in reasonable fear of harm, and (c) his defense to the protection order violation charges was his apparent claim that he thought Turville wanted him to contact her.

presumption.[20]

Jarvis focuses his argument on the fourth factor, whether the offenses were cross-admissible.[21] For purposes of this analysis, we assume, without deciding, that the stalking and protection order violation evidence would not have been admissible to prove the assault charge and that the assault evidence would not have been admissible to prove the protection order violation charges. Nevertheless, lack of cross-admissibility alone is not determinative of necessity for severance, particularly where, as here, "the issues are relatively simple and the trial lasts only a couple of days," such that "the jury can be reasonably expected to compartmentalize the evidence." *Bythrow*, 114 Wn.2d at 721. Moreover, the assault evidence was cross-admissible to prove (1) the stalking charge because it was relevant to Turville's reasonable fear and to whether Jarvis knew or should have reasonably known that Turville was afraid, intimidated, or harassed, even if Jarvis did not *intend* to place her in fear or to intimidate or harass her; and (2) the aggravated sentencing factor related to the stalking charge.[22] Accordingly, this fourth factor, at

[20] When the trial court has instructed the jury to consider each count separately and the jury then convicts on some, but not all counts, it is clear that the jury followed the instruction; and the defendant can demonstrate no prejudice from failure to sever the counts. *State v. Wilson*, 71 Wn. App. 880, 887, 863 P.2d 116 (1993), *rev'd in part on other grounds*, 125 Wn.2d 212, 883 P.2d 320 (1994); *State v. York*, 50 Wn. App. 446, 452, 749 P.2d 683 (1987), *review denied*, 110 Wn.2d 1009 (1988). Here, despite finding Jarvis not guilty of second degree assault, the jury found him guilty of the lesser included fourth degree assault. These verdicts show that the jury followed the instructions; thus, this factor does not weigh in favor of severance.

[21] Jarvis also objects that the trial court failed to balance these factors on the record. We disagree. Although the trial court did not articulate the word "balancing," the record clearly shows that the trial court balanced these factors in weighing them before denying the motion to sever. *See e.g.* I VRP at 20-21.

[22] The aggravated sentencing factor at issue here was former RCW 9.94A.535(3)(h)(i) (2008), which required the jury to determine whether the offense "involved domestic violence" and

best, is neutral to the severance determination.

Turning finally to the fifth factor, any prejudice Jarvis may have experienced was clearly outweighed by concerns for judicial economy. Only one panel of jurors was necessary; the time and resources it took to resolve all of the charges was reduced by trying the charges jointly, particularly because the assault evidence was cross-admissible to prove the felony stalking charge and its related aggravated sentencing factor; several of the same witnesses presented testimony relevant to more than one count and only had to testify once; and only one courtroom was needed. These fact support the "conservation of judicial resources and public funds." *Bythrow*, 114 Wn.2d at 723. Because Jarvis fails to show that a trial involving all counts would be so manifestly prejudicial as to outweigh the concern for judicial economy, we hold that the trial court did not abuse its discretion in denying Jarvis's motion to sever. *Bythrow*, 114 Wn.2d at 718.

III. Sufficient Evidence of Felony Stalking

Finally, Jarvis argues that the evidence was insufficient to support the felony stalking conviction because the State failed to prove that Turville reasonably feared he would injure her. This argument also fails.

When reviewing a sufficiency challenge, we consider the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. *State v. Williams*, 137 Wn. App. 736, 743, 154 P.3d 322 (2007). We consider circumstantial evidence to be as probative as direct evidence. *State v. Vermillion*, 66 Wn. App. 332, 342, 832 P.2d 95 (1992), *review denied*, 120 Wn.2d 1030

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whether "[t]he offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time."

(1993). And we defer to the trier of fact to resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the witnesses. *State v. Boot*, 89 Wn. App. 780, 791, 950 P.2d 964, *review denied*, 135 Wn.2d 1015 (1998).

To prove the felony stalking charge, the State had to prove beyond a reasonable doubt that Turville "reasonably feared that [Jarvis] intended to injure her." CP at 192 (Instruction 14); *see also* RCW 9A.46.110(a)(b). Jarvis argues that there "is ample circumstantial evidence that Ms. Turville did not fear Mr. Jarvis" because she did not contact the police after any of the four uncharged incidents or immediately after the charged assault, and she removed the block on her phone in "an effort to collect evidence against Mr. Jarvis." Br. of Appellant at 26. We disagree.

Jarvis's argument fails to view the evidence in the light most favorable to the State, which shows that (1) Jarvis had engaged in a series of escalating assaults against Turville involving both physical contact and destruction of property; (2) he refused to stop contacting Turville, despite her obtaining a protection order, placing a block on her phone, and failure to respond to his attempted contacts; (3) he indicated in his voicemails and messages that he was often close to Turville's Kitsap County home; (4) his continued attempts to contact Turville indicated he was not willing to let the relationship go; (5) Turville sought and obtained a protection order after a delay, understandable in light of her previous abusive relationship with Jarvis; (6) Turville followed law enforcement's advice and reported Jarvis's repeated contacts to law enforcement rather than simply allowing these contacts to continue; and (7) Turville testified that Jarvis's repeated attempts to contact her made her afraid. Turville's testimony and her obtaining a protection order were sufficient evidence to support the jury's finding that Turville feared for her

or her family's safety when around Jarvis. Furthermore, Jarvis's previous abusive behavior; his persistent refusal to obey the protection order; and his apparently constant barrage of attempts to contact Turville, despite the order, were sufficient facts to support the jury's finding that Turville's concerns for her safety were reasonable, despite her willingness to participate in a law enforcement investigation. We hold that the evidence was sufficient to support the felony stalking conviction.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, C.J.

Van Deren, J.