IN THE COURT OF APPEALS OF IOWA

No. 2-671 / 11-1677
Filed October 3, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL JOHN BONERT,
Defendant-Appellant.

Appeal from the Iowa District Court for Delaware County, Michael J. Shubatt, Judge.

Michael Bonert appeals his conviction for stalking, third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger and Laura Roan, Assistant Attorneys General, and John Bernau, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

Michael Bonert appeals his conviction for his third offense of stalking in violation of Iowa Code section 708.11(3)(a) (2009). He claims the district court erred in admitting exhibits and testimony about past interactions with his stalking victim and the police. He additionally claims there was insufficient evidence to support the court's finding of guilt. We affirm.

I. Background Facts and Proceedings.

Michael Bonert and Victoria Lahr dated for about two years, from 2006 until June 2008 when Lahr ended the relationship. A criminal no-contact order, arising out of a domestic abuse assault charge against Bonert, was entered the following month. The order prohibited Bonert from having any contact with Lahr or her three children.

Despite this order, Bonert continued to have contact with Lahr. He called her over 1200 times in one month. He told her to sleep with one eye open because if she ever had another man in her bed, "I will beat him up and I'll probably beat you up." He repeatedly drove past her house. In January 2009, Bonert pleaded guilty to six violations of the no-contact order, three counts of stalking, a simple assault, and trespass causing injury. A second no-contact order was entered.

Bonert was undeterred. He violated the new order in March, April, and August 2009 by driving slowly past Lahr's house on several occasions and waving at her and her children when he saw them in town. After one of these incidents, the city's chief of police spoke with Bonert. He told Bonert "not to drive by the house or try to intimidate or bother Ms. Lahr." In reply, Bonert said "he

could drive by the house any time he wanted, up to five hundred times if he wanted . . . for any reason, and that when he was done with her, she wouldn't be living in that house." Following a court hearing for these violations, Bonert assaulted the chief of police and one of his deputies in the hallway outside the courtroom. He was charged with interference with official acts causing injury.

The chief of police began watching Lahr's house in an effort to provide her with more protection from Bonert. Lahr also took certain steps to protect herself. She changed the locks on her house, installed a security system and a motion-detector video camera, and obtained a new cell phone number. She spoke with her children about Bonert, telling them to call her if he ever went near them, and she signed up for a victim's notification system that warned her whenever Bonert was released from jail.

In May 2010, the no-contact order was modified to allow Bonert to visit his grandfather, who lived next door to Lahr, on Sundays from 6:00 p.m. until 9:00 p.m. He was also allowed to drive past the road in front of Lahr's house "but for farming purposes only and while doing so shall drive at approximately 25 miles per hour with the windows of his vehicle up." Bonert soon took advantage of these new conditions and began driving slowly past Lahr's house again. She recorded the dates and times she saw him go by her house—July 10, 21, 25, and August 3, 2010—and reported his actions to the police.

Bonert was arrested on August 6. He spent the weekend in jail and was released on the following Monday afternoon. Less than two hours later, Lahr's daughter's boyfriend saw Bonert's truck backed into a driveway that overlooked Lahr's house. Lahr notified the police and sent her children out of the house with

her fiancé. Sure that Bonert was coming for her, Lahr got her gun and waited for him. He was arrested again and charged with stalking, third offense.

Bonert waived his right to a jury trial, and the case was tried to the court. Over Bonert's objections, the State admitted seven exhibits documenting his prior convictions with Lahr as the victim to help prove that Bonert "knew or should have known that his actions were without legitimate purpose, that they would cause a reasonable person fear." In admitting the exhibits, the district court stated it would "not be swayed by any prejudice that would result from that."

The district court ultimately found Bonert guilty of stalking and sentenced him to ten years in prison. Bonert appeals.

II. Discussion.

A. Evidentiary Rulings.

Bonert initially claims the district court erred in allowing the State to admit exhibits documenting his prior convictions for no-contact order violations, stalking, assault, and trespass with injury.[1] We review this claim for an abuse of discretion. *See State v. Helmers*, 753 N.W.2d 565, 567 (Iowa 2008).

It almost goes without saying that evidence of other crimes is not admissible if it is only relevant to show the defendant is a bad person and worthy of conviction. *Id.* at 568; *see also* Iowa R. Evid. 5.404(b) ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of the person in order to show that he acted in conformity therewith."). Such evidence is admissible, however, if offered "for other purposes, such as proof of motive,

[1] These exhibits consisted of Bonert's guilty pleas to the charged offenses, judgment entries, and sentencing orders. None of the exhibits, with the exception of one, contained details of the crimes.

opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Iowa R. Evid. 5.404(b). The State asserts the exhibits detailing Bonert's prior convictions were "relevant to a legitimate issue in dispute: the defendant's knowledge that his actions would place a reasonable person in fear of bodily injury or death." We agree.

In the unique context of a stalking trial, where the reaction of the alleged victim and the defendant's awareness of the person's likely reaction are elements that must be proved, *see* Iowa Code section 708.11(2), evidence of previous interactions between the defendant and the victim is highly relevant. *See Helmers*, 753 N.W.2d at 570; *see also State v*. *Neuzil*, 589 N.W.2d 708, 712 (Iowa 1999) ("'A stalker should know that his actions are unappreciated if he was served with a court order or if he was told by the victim that she no longer wishes to be contacted.'" (citation omitted)). "Isolated instances of unwelcome conduct may not appear to a fact finder to be frightening. However, that view may change once the pattern of conduct and the victim's previous attempts to stop it are revealed." *Helmers*, 753 N.W.2d at 570. Only by showing the history between the defendant and his victim "'can the state establish the justifiable inference that a defendant's charged conduct was in fact intended to engender fear on the part of the victim and that defendant knew it was likely to do so.'" *State v*. *Taylor*, 689 N.W.2d 116, 128 (Iowa 2004).

We do not believe the probative value of this relevant evidence was substantially outweighed by the danger of unfair prejudice to Bonert. *See* Iowa R. Evid. 5.403; *Taylor*, 689 N.W.2d at 129. The State needed the evidence to contextualize Bonert's conduct and his awareness of the effect it would have on

Lahr. *See Taylor*, 689 N.W.2d at 129 (observing "intent is seldom proved by direct evidence, but rather is usually established by inference"). And it presented clear proof of the convictions to the district court, with the details of the crimes largely omitted, thereby lessening the prejudicial impact of the evidence. *See id.* at 123 n.4 (noting that because the no-contact order did not contain any details of the defendant's prior assaults against his wife, "the prejudicial impact of this document was minimal").

Although a fact finder, whether judge or jury, "would have a tendency to conclude from the defendant's past misconduct that he has a bad character," that type of prejudice "is inherent in prior-bad-acts evidence and will not substantially outweigh the value of highly probative evidence." *Id.* at 130. "The more pertinent question is whether the evidence will prompt the fact finder to make a decision based on an emotional response to the defendant." *Id.* The likelihood of such an improper use of the evidence is reduced by the fact that the present case was tried to the court. *Id.*

Indeed, in admitting the evidence, the district court stated, "I believe that I can assess what the true probative value allowed by the law is and not be swayed by any prejudice that would result from that." And in its subsequent ruling on Bonert's guilt, the court carefully limited its use of the evidence, stating that while "we heard a fair amount of evidence concerning those previous occasions," that evidence did not "constitute the course of conduct upon which I'm basing my decision." Instead, the court found the evidence was probative only to show the context of Bonert's interactions with Lahr. In light of the

foregoing, we find no abuse of discretion in the court's decision to admit the evidence.

For the same reasons, we find no merit to Bonert's claim that his trial counsel was ineffective in failing to object to Lahr's testimony "regarding protective orders issued in 2008 and 2009 and the amount of times she called police during those years." *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011) (stating counsel has no duty to pursue a meritless issue). Nor did counsel breach any duty in failing to object to the chief of police's brief testimony about Bonert's assault of him after a court hearing involving Lahr, as his testimony was again offered to show that a reasonable person would be placed in fear by Bonert's course of conduct. As the State argues, "That evidence showed that Lahr's fear was reasonable: the defendant had demonstrated that he did not feel constrained by legal measures taken to control his actions with regard to Lahr."

Having concluded the challenged evidence was properly admitted, we turn to Bonert's claim that the evidence as a whole was insufficient to support the court's finding of guilt.

B. Sufficiency of the Evidence.

Our review of this issue is for correction of errors at law. *Taylor*, 689 N.W.2d at 130. The district court's factual findings are binding on appeal if supported by substantial evidence. *Id.* In making this determination, we consider all the evidence and view the record in the light most favorable to the court's decision. *Id.* at 131. We indulge in all legitimate inferences and presumptions that may be fairly and reasonably deduced from the record.

As alluded to earlier in the opinion, a person is guilty of the crime of stalking when all of the following occur:

> *a*. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to, or the death of, that specific person or a member of the specific person's immediate family.
>
> *b*. The person has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct.
>
> *c*. The person's course of conduct induces fear in the specific person of bodily injury to, or the death of, the specific person or a member of the specific person's immediate family.

Iowa Code § 708.11(2); *see Helmers*, 753 N.W.2d at 567. "'Course of conduct' means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threat, threats implied by conduct, or a combination thereof, directed at or toward a person.'" Iowa Code § 708.11(1)(b).

We begin with Bonert's argument that he was not in "visual or physical proximity" to Lahr and her family. This argument focuses on Bonert's conduct after his release from jail on August 9, 2010, when he parked his truck in a driveway overlooking Lahr's house. Bonert asserts that because he was "376 yards away from Lahr's residence" and "would not have been able to see anyone [in] there," a reasonable person would not have been in fear of bodily injury or death. In making this argument, Bonert ignores his actions leading up to that day, which included driving slowly past Lahr's home on July 10, 21, 25, and August 3 in violation of a no-contact order. The argument also ignores the testimony of the chief of police, who stated that he used the same location to keep an eye on Lahr's house, as it provided him with a "clear visual" of her

residence. Bonert's drive-bys, along with his conduct on August 9, furnish persuasive proof that he placed himself in visual and physical proximity to Lahr on multiple occasions throughout July and into August. *See State v*. *Limbrecht*, 600 N.W.2d 316, 319 (Iowa 1999).

Bonert nevertheless suggests his conduct in driving past Lahr's residence was harmless and would not cause a reasonable person to fear bodily injury or death. The evidence clearly shows otherwise, especially considering the history between Bonert and Lahr. *See Taylor*, 689 N.W.2d at 129 n.6 ("The relationship between the defendant and the victim, especially when marked by domestic violent, sets the stage for their later interaction.").

Lahr testified that when their relationship ended, Bonert told her to sleep with one eye open because if she ever had another man in her bed, he would beat him and her up. From that point forward, he began a campaign to intimidate Lahr, repeatedly driving slowly past her house, sometimes with the windows rolled down in the rain or with the lights on inside the car if it was dark outside. This was in defiance of orders prohibiting Bonert from having contact with Lahr or her children. *See Helmers*, 753 N.W.2d at 568 (stating a no-contact order is "a key piece of evidence" in proving the defendant was aware his course of conduct would place the victim in reasonable fear of bodily injury or death). Repeated criminal sanctions for these violations did not discourage Bonert, who Lahr described as relentless.

The record also contains ample evidence that Bonert's course of conduct caused Lahr to fear for her safety and that of her family. She testified that as a result of Bonert's actions, she changed the locks on her house and installed a

security system and a motion-detector video camera. She warned her children about Bonert and signed up for a victim notification system that would alert her anytime he was released from jail. *See Limbrecht*, 600 N.W.2d at 320 (finding victim's safety precautions evidence that defendant's course of conduct induced fear in her).

When that system notified her of Bonert's release on August 9, Lahr immediately forwarded the message to her family. She explained that Bonert "had a habit of contacting me within hours of his release over the course of the two years, so everyone needed to know immediately and be on alert, because chances were good that he was going to be in the neighborhood." Lahr's prediction was correct, as Bonert was sighted near her house an hour and a half later. When Lahr learned that he was nearby, she called the police and had her children leave the house. She then got her gun out and waited, certain that Bonert was coming to kill her. She testified that she was "scared to death."

Bonert interprets Lahr's actions as indicating "aggression, not fear." We could not disagree more. *See id.* (citing stalking victim's purchase of a gun as evidence of her fear).

In conclusion, we find the State produced substantial evidence on each of the essential elements of the stalking charge.

The judgment of the district court is affirmed.

AFFIRMED.