STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0697

State of Minnesota,
Respondent,

vs.

Robert Phillip Ivers,
Appellant

Filed April 23, 2018
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-16-6806

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

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota; and

Andrew T. Jackola, Special Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

WORKE, Judge

Appellant argues that the evidence was insufficient to sustain his stalking conviction because it failed to prove that he knew or had reason to know that someone other than the

intended recipient of voicemail messages would feel frightened, threatened, oppressed, persecuted, or intimidated by the messages, and that he did not cause such a reaction from the unintended recipient. We affirm.

FACTS

In early 2016, appellant Robert Phillip Ivers called a Hennepin County judge's chambers to inquire about a case. D.J., the judge's law clerk, answered the phone and told Ivers that his case had been dismissed. Ivers called again and asked to speak to the judge. D.J. answered again and told Ivers that attorneys and parties were not allowed to speak directly to the judge, but offered to relay a message.

As part of her job, D.J. listened to messages "left on the chambers' voicemail." Two mornings in February 2016, D.J. listened to voicemail messages left by Ivers. The judge did not listen to the messages. The content of the messages caused D.J. to feel "incredibly concerned" and she contacted the sheriff's department. Ivers was charged with threats of violence (against the judge), and stalking—making or causing the telephone of another repeatedly or continuously to ring. D.J. was the named victim in the stalking charge.

Ivers's voicemail messages were played at his jury trial. One night, Ivers left four messages. The judge was identified as the intended recipient of the first two messages in which Ivers accused the judge of failing to do his job, insulted the judge, and used a great deal of vulgarity. Specifically, Ivers called the judge "a dead f-ck," and threatened to put a woman who opposed him in his case "on the stand and . . . tear her f-cking c-nt out." The final two messages did not identify the judge as the intended recipient, but similarly

included criticisms, accusations, and vulgarity. In the last message, Ivers stated that he would have to get himself arrested so that his case could play out in a criminal trial.

Ivers left a series of 12 voicemail messages a second night containing a barrage of vulgarities, insults, and accusations. Ivers threatened to make the judge "feel some pain"; he warned that he was "coming for" another judge; he cautioned the judges to "be on guard"; he accused the judicial system of "rigging . . . f-cking court cases"; and he stated: "[T]he whole Hennepin County f-cking judicial system, you're f-cking corrupt, you pieces of f-cking garbage. You're corrupt. And . . . we're coming after you, you pieces of f-cking trash." Transcribed, Ivers's openly hostile messages left by voicemail filled more than ten pages and included more than 125 uses of the expletive "f-ck" or some variation of it.

D.J. testified that the number of messages within a short period of time, combined with the "anger" expressed in the messages led her to believe that Ivers might be a danger to the judge. She stated that she was predominantly concerned for the safety of the people identified in the calls because Ivers sounded "very, very angry" and she was unsure of what Ivers was capable of. D.J. testified that she was "a little bit" worried for her safety because she appeared with the judge in public hearings. D.J. also felt "to a certain degree violated" by listening to the language in the messages and "worried about anybody that might come up to chambers."

A deputy testified that D.J. was "bothered" by the messages, reported feeling "uneasy," and found the messages to be "not civil" and "disruptive." D.J. indicated that the language was "colorful and pretty personal, and she felt the goal . . . 'was to put people on edge.'" D.J. also reported that Ivers was "unstable" and that unstable people do

"unusual things." D.J. reported that she was concerned about Ivers's "obsession" because it was unknown "how dangerous" he was.

Ivers testified that when he learned that his case was dismissed he was "out of [his] mind outraged" and left the messages because he wanted "some accountability." He stated that he timed his calls "at night so it would be on their phone so that they would get the message." He stated: "I called them at the nighttime to leave an unobstructed message, and it was so that I didn't kill myself. That's how angry I was. And I still am."

The jury found Ivers not guilty of threats of violence, but guilty of stalking. The district court sentenced Ivers to 180 days in the workhouse, stayed for two years. This appeal followed.

D E C I S I O N

Ivers argues that the evidence is insufficient to support his stalking conviction. "Whe[n] there is a challenge to the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the verdict to determine if the evidence was sufficient to permit the jury to reach the verdict it did." *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995). This court assumes that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Huss*, 506 N.W.2d 290, 292 (Minn. 1993). 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).

The jury found Ivers guilty of stalking—making or causing the telephone of another repeatedly or continuously to ring. *See* Minn. Stat. § 609.749, subd. 2(5) (2014).[1] "'[S]talking' means to engage in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim." *Id.*, subd. 1 (2014). Thus, the state was required to prove that (1) Ivers made or caused the telephone of another repeatedly or continuously to ring; (2) Ivers knew or had reason to know that this conduct would cause D.J., under the circumstances, to feel frightened, threatened, oppressed, persecuted, or intimidated; and (3) Ivers caused this reaction on the part of D.J. *See id.*, subds. 1, 2(5).

Ivers admitted to making the phone calls and leaving the 16 messages. He claims, however, that he did not know or have reason to know that this conduct would cause D.J. to feel frightened, threatened, oppressed, persecuted, or intimidated because he did not intend for D.J. to hear the messages.

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[1] The complaint charged Ivers with "Stalking—Phone Repeatedly/Make Ring Continuously," citing Minn. Stat. § 609.749, subd. 2(5), which criminalizes the act of making or causing the telephone of another to continuously ring. It appears that the complaint inadvertently omitted citation to Minn. Stat. § 609.749, subd. 2(4) (2014), which criminalizes the act of repeatedly making telephone calls. The substance of the complaint and the statement of probable cause include allegations that Ivers violated section 609.749, subdivision 2(4). And Ivers admitted to leaving the voicemail messages. An "omission in a complaint is not reversible error if the defendant understood the charges and did not request a substitute complaint." *State v. Romine*, 757 N.W.2d 884, 889 n.1 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009); Minn. R. Crim. P. 17.06, subd. 1 (stating that a trial will not be affected by a defect in the complaint in matters of form that do not prejudice the defendant's substantial rights).

While our supreme court once held that stalking, under Minn. Stat. § 609.749, was a specific rather than general-intent crime, the legislature subsequently amended the stalking statute to provide that specific intent is not an element. *State v. Orsello*, 554 N.W.2d 70, 77 (Minn. 1996), *superseded by statute* Minn. Stat. § 609.749, subd. 1a; Minn. Laws ch. 96, § 7, at 700. "Specific intent means that the defendant acted with the intent to produce a specific result, whereas general intent means only that the defendant intentionally engaged in prohibited conduct." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007) (emphasis omitted). Because stalking is a general-intent crime, "the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated." Minn. Stat. § 609.749, subd. 1a (2014). With a general-intent crime, the state had to prove only that Ivers intentionally made telephone calls or caused the telephone of another repeatedly or continuously to ring. It is of no matter that Ivers intended for the judge, rather than D.J., to receive the messages.

Ivers argues that the evidence was insufficient to prove that he knew or had reason to know that his conduct would cause D.J. to feel frightened, threatened, oppressed, persecuted, or intimidated, and asserts that he did not cause this reaction from D.J.

In *State v. Hall*, the appellant challenged the sufficiency of the evidence supporting his stalking conviction under Minn. Stat. § 609.749, subd. 2(4), which prohibits an actor from repeatedly making phone calls, sending text messages, or inducing a victim to make phone calls, whether or not conversation ensues. 887 N.W.2d 847, 849, 858 (Minn. App. 2016), *review denied* (Minn. Feb. 22, 2017). This court stated that assessing whether the calls caused the victim to be frightened, threatened, oppressed, persecuted or intimidated

required consideration of all the attributes of the calls. *Id.* at 858 (citing *State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975) (explaining that words must be considered within the context in which they were used to assess whether they were threatening)).

This court stated that the actor's knowledge of the harassing nature of the calls could "be inferred from the content" of the messages, which were "personal, often vulgar, and contained veiled threats." *Hall*, 887 N.W.2d at 858. The victim testified that she "ha[d] never been so threatened," her fear escalated as she listened to the repeated calls, and she was still frightened. *Id.* Thus, in *Hall*, the content of the messages and the victim's testimony provided sufficient evidence to prove that the defendant "knew or had reason to know that his conduct would cause [the victim] to feel frightened, threatened, oppressed, persecuted, or intimidated; and that [the victim] . . . felt this way." *Id.*

Here, the circumstances surrounding the voicemail messages and their content provide sufficient evidence to prove beyond a reasonable doubt that Ivers knew or had reason to know that his conduct would cause D.J. to feel frightened, threatened, oppressed, persecuted, or intimidated.

First, when Ivers called the judge's chambers, D.J. answered the phone. When Ivers asked to speak to the judge, D.J. told him that parties were not allowed to speak to the judge directly, but offered to relay a message. D.J. testified that one of her responsibilities was to listen to messages "left on the chambers' voicemail." And Ivers testified that he specifically called at night so that the messages would be "on *their* phone." He stated: "I called *them* at the nighttime to leave an unobstructed message." Thus, Ivers knew or had

reason to know that the number he called was the judge's chambers and that his voicemail messages would be heard by D.J.

Second, the content of the messages are vulgar, insulting, accusatory, and include veiled threats. While some of the messages were addressed to the judge by name, most were not and on more than one occasion, Ivers named the "whole Hennepin County f-cking judicial system." D.J. was part of the Hennepin County judicial system.

Finally, D.J. testified that she was "a little bit" worried for her safety because she appeared with the judge in public hearings. She also testified that she felt "violated" and was worried about anybody that might be in chambers, which included her. A deputy testified that D.J. was "bothered" by the messages and reported feeling "uneasy." D.J. reported the messages to be "not civil," "disruptive," and indicated that the language was "colorful and pretty personal, and she felt the goal . . . 'was to put people on edge.'" D.J. also reported that Ivers was "unstable" and it was unknown "how dangerous" he was.

Based on Ivers's prior contact with D.J., the content of the messages, D.J.'s testimony, and the deputy's testimony, there was sufficient evidence to prove beyond a reasonable doubt that Ivers knew or had reason to know that his conduct would cause D.J. to feel frightened, threatened, oppressed, persecuted, or intimidated and that D.J. felt this way.

Affirmed.