IN THE COURT OF APPEALS OF IOWA

No. 1-353 / 00-1147
Filed July 18, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

MICHAEL SCOTT DRYML,
Appellant.

Appeal from the Iowa District Court for Linn County, Michael J. Newmeister, District Associate Judge.

Michael Dryml appeals from his conviction and sentence for stalking in violation of Iowa Code section 708.11(2) (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Denver D. Dillard, County Attorney, and Celene Coffman, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

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VOGEL, P.J.

Michael Dryml appeals from his conviction and sentence for stalking in violation of Iowa Code section 708.11(2) (1999), following a trial to the court. He contends the evidence in the record was insufficient to support his conviction. Because the court's verdict of guilt is supported by substantial evidence, we affirm Dryml's conviction and sentence.

Background Facts. In 1997 Dryml was convicted of assault with intent to inflict serious injury for a knife attack on his estranged wife, Rachelle Siechert. Siechert was stabbed five times, resulting in injuries to her chest and neck and partial paralysis of one hand. Dryml was sentenced to prison, and the marriage of the parties was dissolved while he was incarcerated. When Dryml was released from prison in late November 1998, a protective order was in place prohibiting contact with Siechert. That order expired in November 1999 and was not renewed. There is no evidence Dryml violated the order while it was in effect. According to Siechert she let the order lapse "[b]ecause I thought he would leave me alone. I really did."

Then, on January 2, 2000, Dryml and Siechert encountered each other in a Burger King restaurant close to the Wal-Mart store where Siechert worked. It appears from the record that the restaurant was in the same general complex as the Wal-Mart and a neighboring Sam's Club store. Siechert and two co-workers had gone to the restaurant after Siechert finished her shift at 7:00 a.m. Siechert was working at the same store, and was working the same shift, as she had during her marriage.

When Dryml entered the Burger King at approximately 9:30 a.m., he and Siechert caught sight of one another, and the two stared at each other for a few seconds. Siechert characterized Dryml's look as a "glare." Dryml then went into the restroom, and Siechert immediately left Burger King and drove to her parents' house. She testified that approximately twenty minutes later she saw Dryml drive by the front of the residence. She recorded the vehicle's license plate number, but did not call the police at that time. Dryml denied he ever drove by her parents' home.

On January 18, 2000, Siechert was again leaving work, this time around 6:30 a.m. She testified that as she was walking out the front of the store, Dryml drove his vehicle directly in front of her. Siechert ran back into the Wal-Mart store and watched as Dryml drove by the Wal-Mart, past the neighboring Sam's Club, and into the Burger King parking lot. Dryml parked his car facing towards the Wal-Mart, turned off his lights, and for a period of time remained seated in the car with the engine running. Siechert then left the store and went directly to the police station. She provided the police with the license number she had recorded on January 2, which belonged to a vehicle registered to Dryml.

Scope of Review. We view a claim of insufficient evidence for corrections of errors at law. Iowa R. App. P. 4. A guilty verdict will be binding on appeal so long as it is supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). Substantial evidence is found when, viewing all the evidence in the light most favorable to the State, a rational trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. *Id.*

Sufficiency of the Evidence. To achieve a conviction for the crime of stalking the State was required to prove three elements beyond a reasonable doubt:

> 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.
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> 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) (1999).

There is no serious debate as to whether Siechert was in fear of bodily injury, whether that fear was reasonable, or whether Dryml should have known his actions might place Siechert in reasonable fear of injury. Independent witness testimony indicated that, following the encounters, Siechert was agitated, shaking, and upset. Siechert testified she was afraid for her own physical safety and that the fear was induced by both the prior violent assault by Dryml and the fact his actions on January 2 and 18 – driving by her parent's house and her place of employment – were very similar to behaviors he engaged in preceding the knife attack. *See State v. Limbrecht*, 600 N.W.2d 316, 319 (Iowa 1999) (finding proof of stalking in arguably neutral actions, as given the defendant's prior behavior, "what might be considered a harmless infatuation in another context assumed frightening proportions here.") Dryml himself admitted he could

understand why Siechert would be afraid upon seeing him and that he did not doubt she was in fact afraid.

The true issue is whether the facts establish Dryml purposefully engaged in a course of conduct directed at Siechert. The State was required to show that, on two or more occasions, Dryml purposefully maintained a "visual or physical proximity" to Siechert "without legitimate purpose." Iowa Code § 708.11(1) (1999). Dryml contends that this test was not met in two particulars. He argues the record does not contain substantial evidence that he in fact drove by the home of Siechert's parents, which limits the instances of visual or physical proximity to the Burger King encounter on January 2 and the drive past the Wal-Mart on the morning of January 18. He then asserts that these two remaining encounters cannot support the stalking charge, as they were no more than mere "happenstance," and he had a legitimate purpose for each visit.

Although no person besides Siechert saw Dryml drive by the house, Siechert's parents testified their daughter told them Dryml was driving by their home:

> Marilyn Siechert: She went in to call on the telephone in our bedroom that . . . faces south toward E Avenue and she started yelling that Mike [Dryml] was going by. . . . I didn't [see Dryml drive by]. I got up from the sofa but by the time I got to the window, I couldn't – you know, he'd been gone.
>
> Robert Siechert: She was on the phone in our bedroom and she said that Mike had went by, but I did not see him because I was in the other room.

The only other evidence presented by the State was Siechert's subsequent report of the license plate number and police confirmation that the vehicle was

registered to Dryml. In his defense Dryml presented only a flat denial he had driven by the Siecherts' residence. Thus, proof of Dryml's actions, or lack thereof, turns on an assessment of witness credibility.

When evidence is in conflict, it is the role of the district court, as the finder of fact, to resolve this conflict in light of its own credibility assessments. *See State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). In reading the court's ruling it is clear it found both Siechert and her parents to be more credible on this issue than Dryml, as it specifically found Dryml drove by the Siechert home. Nothing in the record demonstrates a basis on which to disturb this determination. *See State v. Kostman*, 585 N.W.2d 209, 211 (Iowa 1998) (finding credibility assessments should be left to the trier of fact unless testimony is "so impossible, absurd, and self-contradictory that the court should deem it a nullity"). Since Dryml does not deny the other two incidents occurred, the question before us is reduced to whether his actions were purposefully directed at Siechert and without legitimate purpose.

While the incident inside the Burger King, standing alone, does not establish a qualifying incident of visual or physical proximity,[1] it does lend support to a finding that the later encounters were purposely directed at Siechert and without a legitimate purpose. Dryml claimed he did not know if Siechert still worked at the Wal-Mart store, but admitted that he assumed she was still employed there and stated that he made sure he did not enter the Wal-Mart store

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[1] The district court did not directly rely on the Burger King contact, ruling: "Although this contact may have been inadvertent, the Court finds that on the same date, he did drive by the home of Ms. Siechert's parents without legitimate reason."

while the protective order was in place. A co-worker of Dryml's also testified that Dryml had told him he would not lunch at the Wal-Mart snack bar because Siechert worked in the store and "there was no way he was going in there." This caution did not extend to the Burger King, however, as Dryml frequented it for both breakfast and lunch, and testified that prior to January 2, he had never encountered Siechert at that location.

The fact Dryml had not before run into Siechert at the Burger King does support his claim that he had no foreknowledge of her presence there on January 2. However, once he encountered her at this place, so close to what he knew to be her employer, within two and half hours of what he knew to be her former shift time, he did not make efforts to minimize future visual and physical proximity with Siechert. Instead, less than three months after the expiration of the no contact order, and within twenty minutes of their first encounter since his 1997 conviction for her assault, he drove by her parent's home: a home that he knew she had moved into after the attack, and that she had moved out of only three months prior.

Then, on January 18, he drove by her place of employment at about the time he had reason to assume she would be ending her shift. His alleged legitimate purpose was that he had gone to the complex to use a gift card at the Sam's Club store, even though he knew there was a Wal-Mart across town that would accept the card and even though he was not seeking to purchase anything particular to Sam's Club. Rather, he claimed he had a low supply of toilet paper and decided to stop by the Sam's Club before work to purchase the item

because he had never been there before and "thought it would be something neat." Although it is apparently possible to access the Sam's Club without driving by the Wal-Mart store, he claimed he took that particular course because the ground was snow and ice covered, and the turn that took him past the Wal-Mart store was the safest route to the Sam's Club. He did not directly contradict Siechert's testimony, but claimed only that, upon finding the Sam's Club closed, he stopped at the Burger King to pick up breakfast.

Again, it is clear from the district court's ruling that it did not find Dryml's testimony to be credible, specifically discounting his alleged legitimate reason for being in the Wal-Mart parking lot that morning. Given our general deference to the court's clear credibility findings in favor of the State's witnesses, *see Kostman*, 585 N.W.2d at 211, and viewing all the evidence in the light most favorable to the State, a rational trier of fact could find Dryml guilty beyond a reasonable doubt. We therefore find his conviction and sentence supported by substantial evidence, and affirm the district court's ruling.

AFFIRMED.

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