

Appellant-defendant Jeffrey M. Robinson appeals his conviction for Stalking,¹ a class B felony, challenging the sufficiency of the evidence. Specifically, Robinson argues that his conviction must be set aside because the State failed to prove that he had violated a no contact order that had been issued as a condition of probation. Concluding that the State proved that that a protective order was in place against Robinson when he committed the offense pursuant to an amended charging information, we affirm the judgment of the trial court.

FACTS

In August 2006, Toni Driver was seven months pregnant with Robinson's child. However, Driver's romantic involvement with Robinson had ceased sometime in April 2006. On August 27, 2006, Driver filed a petition for a protective order against Robinson under Cause Number 48D01-0609-PO-956 (Cause 956), alleging that he had threatened to kill her and their unborn child, stalked her, committed a sex offense against her, hit her, attempted to break into her home, threw a brick through a window of her home, and burned her vehicle. Robinson was given notice of Driver's petition and the protective order that the trial court issued on September 27, 2006. The protective order enjoined Robinson from contacting Driver and ordered him to stay away from Driver's residence. The order was to remain in effect for two years.

On September 23, 2007, Robinson called Driver's cell phone twice at approximately 5:00 a.m. Robinson did not say anything during either of these one-minute calls. On

¹ Ind. Code §§ 35-45-10-5(b)(2), -5(c)(2).

September 27, 2007, Driver received a similar call that was placed from a different telephone number at approximately 1:30 a.m. Driver suspected that the call was made from a payphone. Later that day, Driver located a payphone at a nearby gas station with a number that corresponded to the source of the call that she had received earlier. Employees of the gas station permitted Driver to view surveillance tapes from that morning, and Driver saw that Robinson had been at the gas station at around 1:30 a.m. At approximately 7:15 p.m. that same day, Driver received another hang-up call from the gas station number. Fifteen minutes later, Driver was standing outside her home talking with her neighbors when Robinson rode by on his bicycle. Driver received another hang-up call that was placed from the gas station on September 30, 2007.

Driver saw Robinson near her home on seven to ten occasions in early October 2007. Driver called the police on each of those occasions. On October 12, 2007, at approximately 7:15 a.m., several individuals saw Robinson putting on latex gloves as he walked onto the porch of Driver's residence. Thereafter, Driver found a note on her mailbox that read, "[a]re you wanting to talk to me or are you just harassing me? How's the baby?" Tr. p. 66-67.

On October 15, 2007, Driver found her senior high school yearbook on her porch steps. When Driver discovered that her photograph had been removed from the book, she contacted the police. The following day, one of Driver's cousins saw Robinson in front of a nearby residence around 8:00 a.m. The cousin chased Robinson and called 911. Shortly thereafter, the police located Robinson and arrested him. At the time of the arrest, Robinson was in possession of some binoculars, a knife, and several photographs of Driver.

On October 17, 2007, the State charged Robinson with Count I, class B felony stalking with an unrelated conviction against the same victim, Count II, class B felony stalking while armed with a deadly weapon, and Count III, class C felony stalking in violation of a “no contact order issued as a condition of probation” in violation of Indiana Code section 35-45-10-5(b)(4). Appellant’s App. p. 7. Thereafter, the State amended the information against Robinson, which reduced Count I to a class D felony and added Count IV, which enhanced the stalking offense alleged in Count III to a class B felony based on an allegation that Robinson had an unrelated stalking conviction that involved Driver.

On July 1, 2008, Robinson moved to dismiss Count III, alleging that there was not an active no-contact order against him when he was alleged to have committed the 2007 stalking offenses. More specifically, Robinson alleged:

1. That a no contact order [under Cause Number 48C01-0612-FC-468] was signed on September 17, 2007 by Jeffrey M. Robinson and ordered by Judge Spencer the same date.
2. That the order on its face says it “remains in effect until this case has been tried and the Defendant has been sentenced if found guilty.”
3. That the Defendant . . . was sentenced on September 7, 2007.
4. That the No Contact Order was not in effect on the date and time the Defendant was charged for violating the no contact order in this cause.

Id. at 21.

Robinson’s jury trial commenced the following day. While the parties were discussing the proposed preliminary instructions, the State moved to amend Count III and alleged that Robinson had stalked Driver “in violat[ion] of a protective order issued under

[Cause 956] on September 27, 2006.” Appellant’s App. p. 28. Robinson did not object to the amendment, and the trial court permitted the State to amend the preliminary instructions to reflect the revised Count III charge.

At trial, the State introduced the protective order that was issued in Cause 956 into evidence. The jury found Robinson not guilty of Counts I and II but guilty of Count III. Robinson also admitted the allegations contained in Count IV—the class B felony enhancement. Thereafter, the trial court sentenced Robinson to eighteen years of incarceration. He now appeals.

DISCUSSION AND DECISION

In reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or assess the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Rather, we consider only the evidence favorable to the verdict and all reasonable inferences therefrom. Id. We will affirm the conviction unless “no rational fact-finder” could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

Robinson’s sole argument on appeal is that his conviction must be set aside because the State allegedly failed to demonstrate that he had violated a no contact order issued as a condition of his probation as alleged in Count III of the original charging information. Appellant’s Br. p. 5-8. As discussed above, however, the trial court permitted the State to amend the information in Count III on the first day of trial to allege that Robinson had stalked Driver in violation of the protective order that was issued in Cause 956. Tr. p. 8-9.

Robinson did not object to the amendment, and the State introduced the protective order into evidence and submitted evidence that pertained to that case. State's Ex. 2. Thus, contrary to Robinson's claim, the State produced substantial and credible evidence at trial that a protective order was in place against Robinson when he committed the stalking offense against Driver as the State had alleged in amended Count III of the charging information. As a result, Robinson's claim fails, and we conclude that the evidence was sufficient to support the conviction.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.