

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 11, 2023

FILED
07/31/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DURRELL JAMES A/K/A JAMES DURRELL

Appeal from the Criminal Court for Shelby County
No. 21-01637 Jennifer Johnson Mitchell, Judge

No. W2022-01204-CCA-R3-CD

Defendant, Durrell James a/k/a/ James Durrell, was convicted by a Shelby County Jury of three counts of aggravated stalking (Counts 1 through 3) and one count of stalking (Count 4). The trial court imposed a four-year sentence for each count of aggravated stalking in Counts 1 through 3, and eleven months, twenty-nine days for stalking in Count 4. The trial court further ordered that the sentence in Count 2 be served consecutively to Count 1 and concurrently with the sentences in Counts 3 and 4 for an effective eight-year sentence as a Range II multiple offender to be served in a local workhouse. On appeal, Defendant argues that the evidence was insufficient to support his convictions. Following our review of the entire record and the briefs of the parties, we affirm the judgments of the trial court but remand for correction of a clerical error on the judgment form for Count 2 to reflect that it is to be served consecutively to Count 1 and concurrently with Counts 3 and 4.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J. AND ROBERT W. WEDEMEYER, J., joined.

Phyllis Aluko, Public Defender; Michael Johnson and Lee Filderman, Assistant Public Defenders (at trial); and Barry W. Kuhn, Assistant Public Defender (on appeal), Knoxville, Tennessee, for the appellant, Durrell James.

Jonathan Skrmetti, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Amy Weirich District Attorney General; Stacy McEndree, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Shretha W.¹ testified that from February 2019 until the end of December 2020 she was living with six of her children, which included her daughters S.W., K.W., and C.W., all of whom were under the age of eighteen at the time of the offenses.² Their home was located near a corner store. During this period of time, Shretha W. called the police multiple times because Defendant walked up and down the street “stalking” her daughters. Shretha W. did not know Defendant prior to that time. She described his behavior toward her daughters as follows:

He will just walk up and down our street and stop in front of my house and make comments. Made it uncomfortable for my girls to walk to the store by themselves. Made it uncomfortable for me to have to stay at home with half [of the children] or walk to the store with half [of the children] not knowing if he was gonna come in my house or my yard while I wasn't there.

Shretha W. estimated that she called police more than five times due to Defendant's behavior. During that time, she also flagged down officers who were patrolling the area. Shretha W. testified that she had told Defendant to stay away from her family more than six times.

On the night of March 9, 2019, Shretha W. went to play bingo with her sister and while there, received a phone call from her children who sounded frightened. With trembling voices, they indicated that Defendant was “mumbling some things” and trying to get inside the house. Shretha W. arrived home approximately five minutes later and found that her children were scared but safe, and she did not see Defendant. She said that the children told her that Defendant followed them as they walked back from the corner store, and he attempted to follow them inside the house. S.W. had called police who arrived sometime later and took a report. Later that same night, Defendant returned, and Shretha W. again called police. She followed Defendant, and police took him into custody after they encountered him at Hyde Park located around the corner from the house.

Shretha W. continued having problems with Defendant. At some point, she removed the doorknob from her storm door in an attempt to keep her and her children safe by preventing Defendant from getting inside the house. Shretha W. explained that

¹ It is the policy of this court to refer to minor victims by their initials. In an effort to further protect the victims' identities, we will refer to the victims' mother by her first name and the initial of her last name because one of the victims and her mother share the same initials. We intend no disrespect.

² S.W. turned eighteen near the end of 2019.

Defendant would walk onto the porch and turn the doorknob to try and get into her house, or when her children went inside, he would grab the knob and pull the door to try to come in with them. She saw and heard Defendant turning the doorknob approximately four different times before she removed it. Shretha W. testified that when she told Defendant to get off her porch and leave, he said, "God sent him to talk to us."

On August 6, 2019, the day after her birthday, Shretha W. was sitting on the couch watching the front door waiting on a package to arrive from her sister when she saw a shadow on the front porch. She thought it was the mail carrier and went to the door but found Defendant again trying to get inside her house. Shretha W. told Defendant to leave, but he refused, and she called police. Shretha W. testified that her children were home and in the back of the house. Police arrived thirty to forty minutes later but did not take Defendant into custody. She said that Defendant made her feel uncomfortable. Shretha W. testified that after the police left, Defendant then returned and was looking in S.W.'s bedroom window on the side of the house. She also saw Defendant on the other side of the house where the pool and van were. Shretha W. again called police to her house.

Defendant returned to the victims' house on August 7, 2019. Shretha W. saw him near the dog kennel beside the house. C.W. later found Defendant's cell phone there and gave it to Shretha W. who again called police. When police arrived, Shretha W. gave the phone to one of the officers. Defendant was then arrested. Shretha W. testified that she also called police about Defendant on September 28, 2019, but she did not recall why.

On the night of December 21, 2020, S.W. walked to the corner store and later called and asked Shretha W. to come outside because Defendant had followed her home. She noted that it had been a "while" since she had seen Defendant. Shretha W. met S.W., who was scared and shaking, at the front door. S.W. then said, "Mama, the man [is] right behind me." When S.W. moved, Shretha W. saw Defendant standing on the porch "right in" her front door. Her other children were in the living room at the time. Shretha W. told Defendant to get off her porch, and told her daughters to come inside the house. Shretha W. walked outside, and Defendant was standing on the sidewalk behind some bushes in front of her house. She testified that Defendant told her that God sent him to have oral sex with her and her children, starting from the youngest to the oldest and that he was going to strangle and kill them. Shretha W. told C.W. to call police, and she attempted to keep Defendant at the house until police arrived by saying, "Why not start with me?" Shretha W. walked toward Defendant, and he backed away. She said that all of her children were standing in the doorway, except K.W. who was standing outside. Shretha W. continued interacting with Defendant and was aware that he was not supposed to be near her. They were standing approximately one or two feet apart when police arrived five to ten minutes later and arrested him.

In addition to the times in March, August, and September 2019 and December 2020 that Shretha W. testified to, she said that there were other times during that period when

she saw Defendant at her house and had problems with him and called police. She testified that between February and August 2019, she observed Defendant “messing with” the front doorknob more than three times. Shretha W. had no further problems with Defendant after December 2020. When asked how she felt about all of the things Defendant had said and done in her presence, Shretha W. said, “It sort of make[s] me upset.” She further testified, “It pisses me off. Being the mother of seven girls and I can’t protect them all or be everywhere.” Shretha W. testified that on one occasion, Defendant got into a physical altercation with S.W.’s boyfriend.

S.W. testified that during the period of time from February 2019 to December 22, 2019, two days before she turned eighteen, she had problems with Defendant resulting in times that she had to call or “flag down” police. She did not know Defendant before that time. S.W. described Defendant’s behavior as follows:

We was walking from the store. It was me and my other two little sisters. We were walking from the store and he was at this abandoned house that’s like a couple of houses away from the store.

And so, he used to follow us – all the way back home from the store, he used to follow us all the way up until we get to our house. And he turn around or he’ll be in the bushes by my mom’s house because she has a field by her house. So, he’ll be in the bushes over there just watching us.

S.W. testified that Defendant followed her and her sisters more than one time, and she told him to leave them alone. She said that he would tell them:

God sent him to give us a warning. God told him to come and tell us that we were bad people. God told him to come and punish us because we wasn’t good women. God told him to come and just give us a message.

This caused S.W. to feel uncomfortable and frightened.

S.W. testified that she recalled March 9, 2019, because her mother went to play bingo. That evening, S.W. and C.W. were getting ready to walk to the corner store when they heard “some tugging on the door” and looked out and saw Defendant standing on the porch pulling on the doorknob. They closed the door and notified two unrelated adults in the house, twins Corey and Tory Wilson, who went outside to get Defendant to leave the porch. S.W. testified that Defendant “got wrong with them and was telling them that God sent him down there to punish us.” She said that Corey escorted Defendant off the porch into the street, and the two men fought until Defendant struck him in the face with an object causing him to bleed and fall to the ground before retreating back into the house. S.W.

said that she watched everything from the window, and it made her feel uncomfortable. By that time, S.W. had called police and her mother. Her mother arrived around ten minutes later, and they walked up the street and saw Defendant standing at the abandoned house.

S.W. testified that between March 9, 2019, and August 6, 2019, Defendant pulled on the door attempting to get into their house several times. She said that her mother had to take the door knob off the storm door because Defendant “would try to like come in the house or tug at the door and try to let himself in.”

S.W. was at home during the events of August 6-7, 2019, when her sister saw Defendant in the yard. She said that her mother called police and followed Defendant down the street while on the phone with them. S.W. testified that Defendant was on the side of the house and dropped his phone beside the dog kennel in the driveway. She admitted that she never actually saw Defendant during that time but knew what was happening.

On December 21, 2020, S.W. saw Defendant at the abandoned house as she walked to the corner store. He began following her when she left the store and followed her to the house. She said that if she walked faster, Defendant began walking faster. S.W. testified that Defendant was standing less than five feet away when she reached the front door, and she called her mother several times and banged on the front door for her mother to let her in. She told her mother that Defendant was behind her. S.W. testified that when her mother came outside and told Defendant to leave, he said, “God sent me down here to punish y’all. He said y’all were not good women. He sent me down here to punish y’all.” She said he also said some “inappropriate things.” S.W. further testified that Defendant indicated that he was going to “violate us one by one” and then kill them. This made her feel unsafe and uncomfortable.

S.W. testified that she had other problems with Defendant before she turned eighteen, but she could not recall the specific dates. On one occasion, she was walking home from the corner store when Defendant “grabbed on” her mistaking her for her mother. S.W. explained that Defendant grabbed her arm, and when she turned around, he said, “Oh, my bad. I thought you was your mom.” Defendant then said that he wanted S.W. to give her mother a message when she got home; however, S.W. could not remember what he said.

On another occasion, S.W. said that as she was walking home from the corner store, Defendant began “dancing on” her. She described the dance as “like a grind almost” and “in a circular motion.” S.W. testified that Defendant “never really touched any other part of my body, just the side of my body when he was dancing up on me.” She said that the entire front of his body, from his chest down, touched her. This incident and the incident when Defendant grabbed her made S.W. feel scared and uncomfortable. S.W. noted that

she had problems with Defendant following her from the store more than five times. She said there were four times that she did not feel comfortable leaving the store and called police who took her home because Defendant was following her. S.W. testified that she saw Defendant on one occasion “grinding on” her sister, K.W. and that he made contact with the side of K.W.’s body.

K.W. testified that during 2019 and 2020, she had a problem with Defendant more than once. She said that she first met Defendant when they were at a store, and “he was walking around the store talking about how God sent him.” She was with her sisters, S.W. and C.W. at the time. K.W. also testified about the events of March 9, 2019, when her mother left to play bingo, and S.W. and C.W. found Defendant on the front porch as they were leaving to go to the corner store. K.W. said that she was in the back of the house with the other children and walked to the front of the house and saw Defendant grab C.W.’s hand when she “stuck” it out the door. C.W. then pulled her hand back inside, and they locked the door. K.W. testified that they asked Defendant to leave but he refused, and they called her mother and police. She said that this made her feel scared. K.W. testified that she also witnessed a fight that night between Defendant and Corey Wilson, an unrelated adult who was visiting their home.

K.W. remembered a time in 2019 when they had to “take the door knobs off” because Defendant was trying to get inside the house. She observed Defendant one time twisting the door knob. During the period of time from February 2019 until December 2020, K.W. said that she and her sisters had problems with Defendant following them more than once. She testified that Defendant would get within five feet of her, and “[h]e was always talking about how God sent him to do the things that he [did]and [said].” This made K.W. feel “worried.” She said that Defendant also danced near her, which scared her. K.W. testified that she and her sisters told Defendant more than twice to stop following them or to leave them alone.

K.W. recalled the events of December 21, 2020. She said that S.W. walked to the store, and Defendant followed her back home, but the door was locked. K.W. testified that S.W. called and asked them to let her in the house because Defendant was behind her. They initially thought that K.W. was joking but saw Defendant standing on the curb near some bushes when they opened the door for her. K.W. testified that her mother walked outside and told Defendant to leave, but he refused and was talking back and making threats. K.W. was standing on the porch at the time. She testified:

He was talking about how much he was gonna punish us and how he was gonna do inappropriate things like taser our body parts and do inappropriate things and when he got done, how he was gonna end this and finish us off because that’s what God sent him to do. He was talking about how he knew we wasn’t virgins and how we weren’t good people.

K.W. clarified that Defendant was “talking about raping us, tasing our middle parts, tasting us down there, touching us down there.” She said that this made her feel scared and uncomfortable. K.W. testified that Defendant had walked away by the time that police arrived.

C.W. testified that during 2019 and 2020, she had problems with Defendant. She said that the first incident occurred when her mother was away playing bingo, and C.W. and S.W. were getting ready to walk to the corner store. C.W. testified:

It was dark outside, so, I couldn't see anything. When I opened the door, I heard somebody talking, but he had on black so I couldn't see him. And he grabbed my arm and I went back into the house. The two twins was in there. And they was like, “What's wrong?” And we was like, “It's a man on our porch.”

And that's when he was like God sent him and all this. So, we called my mama. At the same time we calling my mama we called the police. He was still standing out there. When we went outside[,] him and the twins got into a little altercation. They fought. And then he left. But the police had came and - - cause he had came back and they was talking to him and he left. And that's it.

C.W. testified that she did not actually see the altercation between the twins and Defendant because she was inside the house talking on the phone to her mother. She did not see anything else that happened that night.

C.W. testified that on August 6, 2019, she was in the living room with her mother and sisters waiting for a package from her aunt when Defendant “come up onto our porch” peeking into her sister's bedroom window.” She said that Defendant then walked into the bushes beside their house. They called police, and Defendant left. C.W. testified that she found Defendant's phone the following day near the dog kennel beside their house. They called police again to pick up the phone.

C.W. said that she had other problems with Defendant in 2019 when she would see him at the store or in the community. She testified that on one occasion when she and one of her sisters were walking home from the corner store, Defendant was standing at the abandoned house “with some other old dudes,” and he danced “up towards us” and “up against us like on us.” C.W. further described Defendant's behavior as “dancing and moving his hands all round, all up on us.” She and her sister tried to keep walking but Defendant continued “dancing up on us.” C.W. also said that Defendant touched her back with his hand, and his chest touched her arm or shoulder. They got away from him and called their mother. Those touches and interactions with Defendant made C.W. feel scared.

C.W. testified that there were other times that Defendant followed her and her sisters to the corner store, and he would remain inside the store until they left. He then walked out of the store behind them, stopping at the abandoned house. This also scared C.W. She estimated that she had problems with Defendant in 2019 more than three times, and “[m]ore than I can count on once hand.” When she had problems with Defendant, she would call police, walk home, and call her mother.

C.W. testified that on December 21, 2020, the day before her sister’s birthday, she and S.W. were walking home from the corner store, and C.W. noticed Defendant walking behind them. He followed them home, and S.W. called their mother when they got to the porch, and S.W. was banging on the door saying, “He’s behind us.” Defendant was standing on the sidewalk behind them near a bush. C.W. testified that her mother came outside and approached Defendant and told him that she had called police. C.W. and her sisters watched from the porch while Defendant told their mother that God sent him to punish them because they had killed someone. She also heard Defendant say that he was going to make them perform oral sex on him and that he wanted to eat and touch all of them and cut off their vaginas. She said that he was being very “nasty” and “inappropriate.” This made C.W. uncomfortable. C.W. testified that when police arrived, her mother was “acting a fool” and told them that Defendant was not supposed to be around them and was supposed to remain a certain distance away from them. C.W. said that Defendant was not supposed to be around “nowhere near our house or our area.” She did not have any other problems with Defendant after that day.

Officer Cash Blalock of the Memphis Police Department (“MPD”) testified that on the evening of December 21, 2020, he and his partner responded to a call at Shretha W.’s residence. When they pulled up, he saw Defendant talking to Shretha W. and her daughters. Officer Blalock estimated that Defendant and Shretha W. were standing thirty feet apart. Defendant then stopped talking and began walking away. Officer Blalock testified that Shretha W. was “very upset” because Defendant had previously been stalking and harassing them. He said, “She was very agitated with this. Agitated that - - and she told me that he had just gotten out of jail less than 24 hours prior to this incident. She was upset that he was right back there, right back at her house doing this.”

Officer Blalock testified that Shretha W.’s daughters told him that Defendant followed them “from the corner store down the street at Oakwood and Heard. And that he followed them and had been making sexual comments towards them as well.” Officer Blalock testified that Shretha W. told him that Defendant had “bail conditions” and was not supposed to be anywhere near her or her daughters. Officer Blalock then spoke with Defendant, patted him down for weapons, and placed him in Officer Blalock’s patrol car. He verified that Defendant did have bail conditions restricting him from being within 100 feet of Shretha W. and her daughters. Officer Blalock took Defendant into custody for violation of bail conditions. He verified that Defendant was fifty-one years old at the time.

Officer Lametria Dugger of the MPD testified that on the day of August 6, 2019, she and her partner were called to Shretha W.'s residence and spoke with her regarding Defendant. She said that Shretha W. "seemed upset," and "seemed a little frightened for herself and her children." Shretha W. told Officer Dugger that she had an ongoing issue with Defendant who was trying to gain access to her property. He had also followed her and her children to the store, was in her backyard, and at some point was next door in some bushes in a field. Officer Dugger noticed that there were no doorknobs on the front door of Shretha W.'s house.

Officer Dugger testified that Defendant was no longer at the scene, but Shretha W. gave a description and his first name. Officer Dugger located Defendant on the street a few houses down and talked with him about going to Shretha W.'s residence. She told Defendant that he was not allowed back at Shretha W.'s house, and she instructed Defendant to have no further contact with Shretha W. or her children. Defendant indicated that he understood, and Officer Dugger did not arrest him.

Officer Charles Ross of the MPD testified that he and his partner responded to a call at Shretha W.'s residence on the night of March 9, 2019. He had previously been to her residence on multiple occasions and met Defendant. When Officer Ross arrived on the scene, he saw Defendant running down the street, and the victims were following him. Officer Ross pulled to the intersection of Shannon Avenue and Hyde Park and stopped Defendant. Shretha W. told him that Defendant had been in her backyard, and Defendant said, "Ma'am, I was trying to get in your damn house." Officer Ross then placed Defendant under arrest. He had previously told Defendant several times that "he needed to stay away from that residence with those young girls."

Officer James Henderson of the MPD testified that he was dispatched to Shretha W.'s residence on August 7, 2019, and "tagged" Defendant's cell phone that had been found at the residence. He spoke with Shretha W. and three of her daughters who were "upset, excitedly upset." They told Officer Henderson that the phone "belonged to a person that was bothering them, coming around, stalking them, following them down the street, things like that."

Officer Valesha Jennings of the MPD testified that on September 28, 2019, she and her partner responded to a call at Shretha W.'s residence. Two of Shretha W.'s daughters told her that their mother was on the street behind the house with Defendant, who was not supposed to be there. Officer Jennings made contact with Shretha W. and one of her daughters, who were "[v]ery hysterical" and "[s]creaming" because Defendant would not leave Shretha W.'s children alone or stop following them to the store. Defendant was also there, but did not say anything. When Officer Jennings asked Defendant why he was back at the residence, he told her to leave him alone. She then verified Defendant's identification and arrested him because he had an outstanding warrant "for that exact situation." Officer

Jennings was familiar with Defendant because she had “previously heard multiple calls going to that location pertaining to him.” She told him to stay away from Shretha W. and her family.

Jennifer Sigan, Chief Principal Criminal Court Clerk for Shelby County, identified a document dated September 28, 2019, containing Defendant’s bail conditions. It stated that Defendant was a threat to the alleged victim or other family or other household members; Defendant was restrained from threatening to commit, attempting to commit, or committing specific offenses against Shretha W. or other family members or household members; Defendant was to vacate and stay away from the home of the victims or any other locations where the victims were likely to be; and Defendant was prohibited from harassing, annoying, telephoning, contacting, or otherwise communicating with the victims directly or indirectly. Ms. Sigan testified that Defendant would have been read his bail conditions, and he would have signed it, and “it would have been given to the court jacket, the bail company and anyone else.” She noted that Defendant signed the document with the bail conditions on September 30, 2019. Ms. Sigan testified that defendants were usually provided with a copy of the conditions for bail.

ANALYSIS

Defendant argues that the evidence was insufficient to support his convictions for the aggravated stalking of S.W., K.W., and C.W., and the stalking of Shretha W. The State responds that the evidence is sufficient to support all of the convictions.

“Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009) (citing *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992)). “Appellate courts evaluating the sufficiency of the convicting evidence must determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)); see Tenn. R. App. P. 13(e). When this court evaluates the sufficiency of the evidence on appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence. *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011) (citing *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. *State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005); *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998). The standard of review for sufficiency of the evidence “‘is the same whether the conviction is based upon direct or circumstantial evidence.’” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)

(quoting *Hanson*, 279 S.W.3d at 275). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence, the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence. *Dorantes*, 331 S.W.3d at 379 (citing *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006)). When considering the sufficiency of the evidence, this court "neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury." *Wagner*, 382 S.W.3d at 297 (citing *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)).

It is an offense to intentionally engage in stalking. T.C.A. § 39-17-315(b)(1). Stalking is defined as a "willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested[.]" *Id.* § 39-17-315(a)(4). Pursuant to the statute in effect at the time of the offenses and as relevant to this case:

(1) "Course of conduct" means a pattern of conduct composed of a series of two (2) or more separate, noncontinuous acts evidencing a continuity of purpose, including, but not limited to, acts in which the defendant directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to a person, or interferes with a person's property;

(2) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(3) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;

* * *

(5) "Unconsented contact" means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

- (A) Following or appearing within the sight of that person;
- (B) Approaching or confronting that person in a public place or on private property;

* * *

- (D) Entering onto or remaining on property owned, leased, or occupied by that person;

* * *

- (6) “Victim” means any individual who is the target of a willful course of conduct involving repeated or continuing harassment.

Id. at § 39-17-315(a)(1)-(6).

Therefore, according to the elements of this statute, to sustain a conviction for stalking, the evidence must prove beyond a reasonable doubt that a defendant engaged in (1) a willful course of conduct; (2) involving repeated or continuing harassment of another individual, including, but not limited to, repeated or continuing unconsented contact; (3) that would cause a reasonable person to suffer emotional distress and that actually caused the victim to suffer emotional distress; and (4) that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. *See State v. Flowers*, 512 S.W.3d 161, 165-66 (Tenn. 2016) (citation omitted). Furthermore,

[i]n a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

T.C.A. § 39-17-315(f).

As relevant here, for the offenses to be elevated to aggravated stalking, the State had to prove that each of the victims was less than eighteen years of age at any time during Defendant’s course of conduct and that Defendant was five or more years older than the victim. *See Id.* § 39-17-315(c)(1)(B).

Viewed in the light most favorable to the State, the proof at trial was sufficient to support Defendant’s conviction for stalking Shretha W. and his convictions for the

aggravated stalking of S.W., K.W., and C.W., who were all three minors at the time of the offenses, and Defendant was more than fifty years old.

During the period of time from February 2019 until December 21, 2020, Shretha W. estimated that she called police more than five times due to Defendant's behavior of walking up and down the street in front of her house and making comments to her three daughters. She also flagged officers down during this period of time, and she told Defendant more than six times to stay away from her family. Due to the problems that Shretha W. encountered with Defendant, she removed the doorknob from her storm door to prevent Defendant from getting inside her house while her children were home. Shretha W. explained at trial that on multiple occasions, Defendant walked onto her porch and turned the doorknob to try to get into her house, or grab the doorknob to try to follow the children inside. She said that when she told Defendant to get off her porch and leave, he said, "God sent him to talk to us." Shretha W. said that she saw and heard Defendant turning the doorknob approximately four separate times before she removed it.

The victims testified concerning three specific events involving Defendant. On the night of March 9, 2019, while Shretha W. was away playing Bingo, and S.W. and C.W. were getting ready to walk to the corner store, Defendant was on the porch and grabbed C.W.'s arm when she opened the door. Defendant said that God sent him there to punish them. Defendant also struck Corey Wilson in the face when Mr. Wilson attempted to escort him from the porch. S.W. testified that Defendant's behavior made her feel uncomfortable, and C.W. and K.W. also said that they felt scared. Later that same night, Defendant returned to the residence.

On August 6, 2019, Shretha W. was sitting on the couch while her daughters were in the back of the house when she saw a shadow on the porch that she thought was the mail carrier. She went to the door and found Defendant trying to get into her house. Shretha W. told Defendant to leave, but he refused. Shretha W. said that this made her feel uncomfortable. Defendant returned later that day and was looking into S.W.'s bedroom window. Shretha W. also saw Defendant on the other side of the house where the pool and van were. Defendant returned to the residence on August 7, 2019, and Shretha W. saw Defendant near the dog kennel beside her house. C.W. later found his phone there.

On the night of December 21, 2020, S.W. and C.W. walked home from the corner store, and Defendant followed them and was standing on the sidewalk behind them when they arrived home. Shretha W. came out of the house and told Defendant to leave, but he refused. Defendant then told her that God sent him to punish them, force them to perform oral sex on him, and kill them. He also said that he wanted to eat and touch all of them and cut off their vaginas. K.W. heard Defendant and testified at trial that Defendant was "talking about raping us, tasing our middle parts, tasting us down there, touching us down there." This made C.W. uncomfortable, and K.W. felt scared and uncomfortable.

S.W. testified that she had additional problems with Defendant during the period of time from February 2019 to December 22, 2019, two days before her eighteenth birthday, resulting in times that she had to call or “flag down” police. She said that Defendant followed her and her sisters home from the corner store, and watched them from the bushes beside their house. Defendant followed S.W. and her sisters more than once, and she told him to leave them alone. Defendant told them God sent him to give them a warning and that they were bad people. He also said that God told him to punish them. This caused S.W. to feel uncomfortable and frightened.

S.W. testified that on one occasion before she turned eighteen, Defendant grabbed her when she was walking home from the corner store mistaking her for her mother. On another occasion, he began “dancing on” her as she was walking home from the store, and the entire front of his body, from his chest down, touched her. This incident and the incident when Defendant grabbed her made her feel scared and uncomfortable. S.W. testified that she had problems with Defendant following her from the store more than five times, and there were four times that she did not feel comfortable leaving the store and called police who took her home.

K.W. testified that during the period of time from February 2019 to December, 2020, she had a problem with Defendant more than once. She said that Defendant would get within five feet of her, and talk about “how God sent him to do the things that he [did] and [said].” This worried K.W. She testified that Defendant also danced near her, which scared her. K.W. said that she and her sisters told Defendant more than twice to stop following them or to leave them alone.

C.W. had additional problems with Defendant during 2019 when she saw him at the store or in the community. On one occasion, when she and one of her sisters were walking home from the corner store, Defendant danced “up towards” them and “up against us like on us.” C.W. described Defendant’s behavior as “dancing and moving his hands all round, all up on us.” She said that Defendant touched her back with his hand, and his chest touched her arm or shoulder. This made C.W. feel scared.

There were other times that Defendant followed C.W. and her sisters to the corner store, and he remained inside the store until they left. He also walked out of the store behind them. This also scared C.W. She estimated that she had problems with Defendant in 2019 more times than she could “count on one hand.”

From this evidence a rational juror could have concluded that Defendant’s behavior caused Shretha W., S.W., K.W., and C.W. to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Defendant argues that the State did not prove that Shretha W. actually felt terrorized, frightened, intimidated, threatened, harassed, or molested because when asked at trial how Defendant’s actions made her feel, she responded, “It pissed me off.” She also said that his actions made her feel uncomfortable.

Defendant asserts that Shretha W. did not feel terrorized, frightened, intimidated, threatened, harassed, or molested by Defendant because she engaged in conversation with him at her house on one occasion and advanced toward him when he backed away.

However, Defendant continued to have contact with Shretha W. after she repeatedly told him to stay away from her family and to leave her residence. She eventually had to remove the doorknob from her storm door in an attempt to protect her family and prevent Defendant from coming inside her house. Shretha W. called the police to her house numerous times and also flagged them down in the street because Defendant continued harassing her and her daughters and at one point threatened to kill them. When Officer Dugger arrived at the residence on August 6, 2019, Shretha W. seemed upset and frightened for herself and her children. She was “excitedly upset” when Officer Henderson arrived at the residence the following day after Defendant had been there. Shretha W. was “[v]ery hysterical” and “[s]creaming” when Officer Jennings was called to the residence on September 28, 2019, because Defendant would not leave her children alone or stop following them to the store. She was “very upset” and “very agitated” when Officer Blalock went to the residence on December 21, 2020, because Defendant was back at her house after being released from jail just twenty-four hours earlier. This constitutes prima facie evidence that Defendant’s conduct caused Shretha W. to actually feel terrorized, frightened, intimidated, threatened, harassed, or molested. T.C.A. § 39-17-315(a)(4); (f).

Contrary to Defendant’s assertions, his criminal conduct during the period of February 2019 to December 22, 2020, was repeated and continuing. Defendant argues that he did not engage in a continuing course of conduct as to all four victims because Shretha W. only described three separate incidents - March 9, 2019, August 6, 2019, and December 22, 2019 - in which Defendant approached her and her three daughters. However, as pointed out by the State, a “course of conduct” is defined as “two ...or more separate, noncontinuous acts evidencing a continuity of purpose[.] *Id.* § 39-17-315(a)(1). The statute does not require that the acts occur within any particular interval. There was evidence presented in this case that Defendant committed numerous acts in addition to those three specific dates, and as argued by the State, “all of which evidenced a continuity of purpose to harass his victim[s].”

We conclude that a rational jury could have determined beyond a reasonable doubt that Defendant engaged in a willful course of conduct involving the repeated or continuing harassment of Shretha W., S.W., K.W., and C.W. that would cause a reasonable person to feel, and that actually did cause Shretha W., S.W., K.W., and C.W. to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Therefore, the evidence is sufficient to support Defendant's convictions and he is not entitled to relief on this issue.

CONCLUSION

For the foregoing reasons, the judgments of the trial court are affirmed. However, we remand for correction of a clerical error on the judgment form for Count 2 to reflect that Count 2 is to be served consecutively to Count 1 and concurrently with Counts 3 and 4.

JILL BARTEE AYERS, JUDGE