

**IN THE COURT OF APPEALS OF IOWA**

No. 7-465 / 06-0846  
Filed September 19, 2007

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**MAHENDRAKUMAR MANEKLAL PATEL,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrrom,  
Judge.

Mahendrakumar Patel appeals his convictions for attempted murder and  
stalking. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis Hendrickson and  
James Tomka, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County  
Attorney, for appellee.

Heard by Huitink, P.J., and Vogel and Baker, JJ.

**BAKER, J.**

Mahendrakumar Patel appeals his convictions for attempted murder and stalking contending there was insufficient evidence to support his convictions. We affirm the trial court with respect to both convictions.

**I. Background and Facts**

In August 2005, Patel made three trips from Missouri to the Des Moines area to see Lisa Bui. Patel and Bui had a romantic relationship during the time Bui lived in Missouri with her parents. Their relationship involved frequent gambling and the exchange of large sums of money.<sup>1</sup> Bui tried to break up with Patel a number of times, but he would talk her out of it by threatening to commit suicide or to tell her parents about their relationship. In the summer of 2005, Bui moved to Iowa without telling Patel. She moved to get away from Patel and to resume a relationship with Paul Freeman, a man she had previously dated.

Patel came to Des Moines on August 1. He suspected Bui had come to Des Moines, and he planned to rent a dark, mid-sized car in order to follow Bui and to avoid detection. He told the car rental clerk that his girlfriend had taken his money, used him, and now loved someone else, and that he wanted to teach her a lesson. The clerk called the police, and Patel was arrested.

On August 8, Patel rented a car in St. Louis and returned to Des Moines. He went to Freeman's house and parked. Freeman and Bui saw Patel. They called the police, and Patel was arrested. Stalking charges were filed against him, and a no contact order was entered prohibiting contact with Bui.

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<sup>1</sup> Patel claims he gave Bui approximately \$300,000 to \$400,000 over a four-year period. She testified that Patel frequently gave her money, or asked her to hold his gambling money, but denies she received the amount claimed by Patel.

Patel returned to Iowa on August 16 for an August 18 court date concerning the stalking charges. On August 16, Patel followed Freeman throughout the evening and eventually drove to Bui's apartment complex. He called Bui eighteen times between 9:00 and 10:15 p.m. She returned his calls at 10:21 p.m., and they talked for eighty-two minutes. On August 17, Bui and Patel spent the day at Valley West Mall. Although Freeman gave Patel \$300 to get a motel, Patel spent the night of the 17th in Bui's apartment. On August 18, Patel and Bui went together to Patel's court appearance. They spent the rest of the day at Prairie Meadows casino in Altoona.

On August 21, Patel came to Bui's apartment early in the morning. Bui testified she heard a noise and found Patel at her door with the door open. She tried to get him to leave, but he talked her into letting him in. In the afternoon, they went to Prairie Meadows.<sup>2</sup>

Patel and Bui left the casino at approximately 7:39 p.m. While driving on Hubbell Avenue, Patel told Bui he had to urinate and pulled into the parking lot of a storage and vault business. Bui testified that Patel then opened the back passenger door and grabbed her violently by the hair, placed a towel over her face to smother her, and attempted to tie her wrist to a headrest with a plastic flex cuff. She fought back, begged him not to hurt her, and told him she loved him. Bui got away and ran toward Hubbell, where she flagged down a passing motorist, Tyler Sandin. She called Freeman and 911. Patel drove off quickly. As the police drove Bui to the police station, Patel called her a number of times.

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<sup>2</sup> Patel testified he gave Bui money to hold for him. At one point, he thought she had given him \$2000, but she had given him only \$1500. This made him angry, because he was unable to place an extra bet that he believed would have allowed him to win \$5000.

He told Bui he was going to kill himself, that he loved her, and he asked for her forgiveness. Police later discovered his car with a flat tire in a ditch.<sup>3</sup>

Patel was arrested at Prairie Meadows on August 23. He was charged with attempted murder in violation of Iowa Code section 707.11 (2005), attempted burglary in violation of sections 713.1 and 713.6, and two counts of stalking (Bui and Freeman) in violation of section 708.11.<sup>4</sup> Following a February 2006 bench trial, Patel was convicted of one count of stalking (Bui) and attempted murder.

## II. Merits

Patel contends there was insufficient evidence to support his convictions. We review challenges to the sufficiency of the evidence for correction of errors at law. Iowa R. App. P. 6.4. As with a jury verdict, we will uphold the trial court's findings in a jury-waived case if they are supported by substantial evidence. *State v. Weaver*, 608 N.W.2d 797, 803 (Iowa 2000). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Webb*, 648 N.W.2d 72, 75-76 (Iowa 2002) (citing *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001)).

Patel contends there was insufficient evidence to establish his guilt because Bui's testimony lacked credibility. The trial court acknowledged that Bui made false statements to the police, such as telling officers that she had not had a

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<sup>3</sup> During a police interview, Patel claimed that, as they left the casino, he told Bui he planned to tell her parents about their relationship and the large sums of money he had given her, and about an abortion she had earlier. She begged him not to and, when they came to a stoplight, jumped out of the car. At trial, Patel testified that he had told Bui that he planned to talk to her mother and to file charges against her for having stolen checks from him. Bui begged him not to call the police and jumped out of the car.

<sup>4</sup> The case involving the harassment and interference charges in connection with Patel's August 1 arrest was continued by agreement of the parties.

romantic relationship with Patel, and that Bui “did several things that seem illogical,” such as inviting Patel to stay overnight and going to the casino with him. The court noted that “[i]t is not unusual for domestic abuse victims to act in ways that seem illogical to those not in an abusive relationship.” See *State v. Taylor*, 689 N.W.2d 116, 127 n.5 (Iowa 2004) (citing a survey wherein prosecutors reported that domestic abuse victims are often uncooperative).

The trial court found that Patel was not a credible witness and cited several examples to support its finding, including Patel’s testimony that he always kept the towel on the headrest of the passenger seat of his car, but in an earlier interview said he had used it to dry off after showering, and his testimony that Bui jumped out of his car at a red light at the intersection by the storage and vault business, but there is no stoplight there. The court also rejected Patel’s argument that Bui fabricated the entire incident in order to avoid repaying money to him, finding the “argument is undercut by Patel’s repeated statements . . . that he gave money to Bui because he loves her, and that he did not expect her to repay him.”

The trial court concluded Bui was a more credible witness than Patel. The court noted, for example, that Sandin’s testimony that Bui came running onto Hubbell Avenue was consistent with Bui’s testimony. The court also noted that Bui’s claim she met Patel at Valley West Mall on August 17, so that he would not learn where she lived, was more credible than Patel’s claim that he spent the night of August 16 at Bui’s apartment. Cell phone records showed Patel telephoned Bui at 8:20 a.m. and 9:49 a.m. on August 17. Further, if he had spent

the night at her apartment, there would have been no reason for them to meet at the mall.

Credibility determinations are usually left to the trier of fact, who is in a better position to evaluate the credibility of witnesses. *Weaver*, 608 N.W.2d at 804 (citing *State v. Myers*, 382 N.W.2d 91, 97 (Iowa 1986)). When determining a witness's credibility, "the trial court may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the trial." *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Additionally, even where a witness's credibility is "of the lowest order," and that witness's testimony alone would be insufficient to support a conviction, if the testimony is corroborated, "[w]e cannot interfere with a judgment rendered on the mere ground of conflict of evidence and want of credibility of one witness whose testimony is supported, as well as assailed, and not entirely destroyed." *State v. Bixby*, 39 Iowa 465, 465-66 (1874).

In this case, the trial court found Bui was a more credible witness than Patel, and in its recitation of credibility findings noted the bases for its conclusion. Further, the physical evidence (e.g., Bui's hair found on the towel and the package of plastic flex cuffs on the floor of the back seat) and Bui's cell phone records corroborate Bui's testimony. See *Weaver*, 608 N.W.2d at 804 (upholding guilty verdict in face of attack on credibility of witness where verdict was "strongly supported by the physical evidence on which the court relied"). We conclude there is substantial evidence to support the trial court's verdict.

**AFFIRMED.**