STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2019AP1409-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHANLER LEE GUYTON,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE DOOR COUNTY CIRCUIT COURT,
THE HONORABLE DAVID L. WEBER, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the State present sufficient evidence for the court to convict Chanler Lee Guyton of five counts of threat to a witness?

The circuit court answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. This case may be resolved by applying well-established legal principles to the facts of this case.

INTRODUCTION

Guyton threatened to kill five employees of the Department of Health Services (DHS). He did so while DHS was investigating and facilitating a safe home for Guyton's son. After naming the five employees, he said that "[t]his is going to turn very tragic and this will be the sickest thing that Door County has ever seen before. I am going to come to your office for you, armed. You violated my rights so now I am going to violate yours. I will be out in 6 months and will be taking this into my own hands then."

At a court trial, the State presented testimony from the five employees. Each employee explained that she considered Guyton's threat to be a true threat, that she did not consent to the threat, and that she thought it was possible that she would be called to testify in a proceeding involving Guyton.

Guyton admitted to intentionally threatening the victims. Now, he claims that there was insufficient evidence to convict him on all five counts. He claims that the State failed to show that: two women were witnesses as defined by statute, that he did not know that they were witnesses, or he threatened them because they were witnesses.

The State presented sufficient evidence to meet its burden of proof. Each of the five victims were witnesses because they likely would have testified at a subsequent hearing. Guyton knew that the victims were witnesses. And finally, the State did not need to prove that Guyton threatened the victims because they were witnesses, but even if it was required, the State met its burden. This Court should affirm the judgment of conviction.

STATEMENT OF THE CASE

The State charged Guyton with five counts of threats to a witness. Wis. Stat. § 940.201(2). Guyton waived his right to a jury trial. (R. 65:17.)

At the bench trial, M.E. testified that she worked at the Door County Department of Human Services (DHS). (R. 65:33.) In that capacity, she was a caseworker in a Child in Need of Protection and/or Services (CHIPS) matter regarding Guyton's son, C.P. (R. 65:34.) Around April 3, 2017, the CHIPS proceeding entered the post-dispositional phase and M.E. became the caseworker after she took over the case from A.L. (R. 65:36.) When M.E. took over the case, Guyton was incarcerated in the Door County Jail. (R. 65:37.)

In her role as caseworker, M.E. met face-to-face with Guyton monthly to discuss the case. (R. 65:39.) During this period, Guyton had phone calls with his son, but no in-person visits. (R. 65:39.) Guyton acted hostile towards M.E. during her visits, and he sent written complaints to her supervisors, D.G. and C.F. (R. 65:40.)

On July 18, 2017, M.E. called Guyton to tell him that phone calls with his son would be suspended while an investigation could be conducted concerning allegations that Guyton abused his son. (R.65:46–47.) Guyton became hostile and began yelling at M.E. (R. 65:48.)

Guyton threatened M.E., C.F., D.G., A.L., and B.C. by name, and said that he would come to their office armed. (R. 65:49.) Specifically, Guyton said,

> I'm going to deal with this with my own hands when I get out of here. Everyone who has touched the case is going to pay for this. [M.E., B.C., A.L., D.G., C.M.][1]. This is going to turn very tragic, and this will be the sickest thing that Door County has ever seen before. I am going to come to your office for you armed. You violated my rights, now I am going to violate yours. I will be out in six months and will be taking this into my own hands then.

(R. 65:52.)[2]

M.E. knew that each of the women Guyton threatened had contact with Guyton's case. (R. 65:53.) A.L. was the intake worker on Guyton's CHIPS case. (R. 65:61.) B.C. was the investigator on the allegations that Guyton abused his son. (R. 65:61.) D.G. served as M.E.'s supervisor and oversaw and approved M.E.'s work on the case. (R. 65:62.) C.M. was D.G.'s supervisor. (R. 65:63.)

M.E. told Guyton that she needed to report his threatening comments to her supervisor. (R. 65:56.) M.E. told her supervisor, B.C., in person immediately after ending the phone call; B.C. reported it to her supervisor, C.M. (R. 65:58–59.) Then, M.E. reduced the call to writing. (R. 65:59.)

M.E. felt scared by Guyton's threats and considered them real threats. (R. 65:68.) Because of the result of the CHIPS case, there was a chance that Guyton's parental rights could be terminated. (R. 65:71.) If that action commenced,

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[1] M.E. used the victims' first names when she read the statement at trial. To protect the victim's identity, the State uses initials.

[2] M.E.'s notes did not list a threat against B.C. (R. 65:53.) M.E. testified that she missed recording B.C.'s name on the note, but Guyton named her in his verbal threat. (R. 65:53.)

M.E. would have been a witness in that case. (R. 65:71–72.) B.C. was investigating allegations of child abuse by Guyton, and if criminal charges were filed, M.E. believed that she would have been called as a witness. (R. 65:73.) Additionally, if there were a new CHIPS proceeding, M.E. would have been a witness at that proceeding. (R. 65:73.) She was a witness at a CHIPS proceeding. (R. 65:96.)

D.G. testified that her personal contact with Guyton was limited. (R. 65:109.) She became aware of Guyton's case when he was arrested in December 2016 and her office needed to find a place for his son to live. (R. 65:112.) B.C., A.L., and M.E. worked on the case and placed the son with his maternal grandmother. (R. 65:112–13.) Guyton was upset with that decision. (R. 65:112, 114.) D.G. testified that she received at least eight letters from Guyton complaining about DHS's handling of the placement of his son. (R. 65:116.) Because of those complaints, D.G. involved her supervisor, C.M. (R. 65:117.) D.G. observed M.E. after Guyton threatened to kill the five DHS employees, and M.E. was visibly upset and scared. (R. 65:121–22.)

D.G. testified that she had the potential to be a witness in a future case with Guyton. (R. 65:133.) She thought that case might be a termination of parental rights case. (R. 65:133.) Or she might have to testify in a post-dispositional matter regarding his CHIPS case, such as a permanency review. (R. 65:134.) She also could have been asked to testify in a potential child abuse case, if the allegation rose to the level of a crime. (R. 65:135.)

C.M. testified that she became involved in Guyton's case when he wrote letters to her and other staff members at DHS. (R. 65:164.) Guyton insinuated in his letters that he might initiate legal action against DHS. (R. 65:167.) C.M. overheard M.E.'s side of the conversation where Guyton threatened to kill the DHS employees. (R. 65:170.) C.M. witnessed that M.E. was very upset after the call. (R. 65:175.)

Together they notified corporation counsel and the police. (R. 65:178.)

C.M. explained that she typically would not testify in a CHIPS case because she was a supervisor, but it was possible that she would have to testify against Guyton. (R. 65:184–85.) Even though the CHIPS proceeding was completed, C.M. thought it was possible she could be called to testify in a post-dispositional hearing or a termination of parental rights hearing. (R. 65:185.)

B.C. testified that she had contact with Guyton when she was involved in a child protective services investigation and she talked to him on the phone a number of times. (R. 65:201.) B.C. helped contact the police to report the threats that Guyton made to M.E. (R. 65:211.) Guyton had been hostile to B.C. on the phone previously. (R. 65:211–12.) B.C. believed that Guyton might carry out his threat and kill them all. (R. 65:215.)

B.C. explained that she had testified in other CHIPS proceedings even in the post-dispositional phase. (R. 65:220.) She could also foresee the possibility of testifying at a termination of parental rights proceeding. (R. 65:221.)

Finally, A.L. testified. (R. 65:232.) A.L. was involved in the CHIPS petition when she took over the investigation from B.C. (R. 65:234.) A.L. testified at the CHIPS proceeding and at a temporary placement hearing. (R. 65:235, 249.) At the hearing, the court explained circumstances where DHS might initiate a termination of parental rights. (R. 65:236.) A.L believed that Guyton would come and shoot her and her co-workers. (R. 65:243.)

Guyton testified that when he was arrested in December of 2016, he had custody of his son. (R. 66:11.) Guyton was angry about DHS's placement of his son with his maternal grandmother and wrote letters to DHS to complain. (R. 66:13–14.) Guyton admitted that he was angry when M.E.

called to tell him that he could no longer talk to his son on the phone because of a child abuse allegation. (R. 66:16–17.)

Guyton testified that he planned to file a civil lawsuit against the DHS employees. (R. 66:23.) He hoped that the employees would be fired from DHS. (R. 66:26.) Guyton admitted that he named five employees and did so because he believed that as a unit the employees were violating his rights. (R. 66:27.) Guyton planned to reopen his CHIPS case and attempt to regain custody of his son. (R. 66:29.) He claimed that his threat was out of anger, but not a serious threat to harm the employees. (R. 66:29.)

Guyton knew that DHS employees often testify in CHIPS cases. (R. 66:32.) Guyton admitted that he made the threat to kill the five victims. (R. 66:39.) Guyton testified that he expected the DHS employees to stop harassing him after he made the threats. (R. 66:49.)

Guyton admitted that he knew he would have a court hearing in response to his objection about placement of his son. (R. 66:50.) He knew that the DHS employees would testify and that they would have to justify their decision to change Guyton's ability to have contact with his son. (R. 66:50–51.)

In rebuttal, the State presented a portion of Guyton's journal, where he admitted to making the threats to M.E. and the other social workers and that he felt like killing someone. (R. 66:59–60.)

The court convicted Guyton on all five counts. (R. 73:23–24.) Guyton conceded at trial that the State proved that D.G. and C.M. were witnesses. In closing, he argued that "There is little dispute that the named victims meet the definition of witness under the jury instruction." (R. 43:5.) During its oral ruling, the court accepted that concession. (R. 73:5.) As to whether Guyton knew the victims were witnesses, the circuit court concluded that Guyton "felt

wronged in the context of a very specific judicial proceeding, with a specific case number and pleading that was being investigated by a governmental body." (R. 73:17.) Given the evidence at trial, "A reasonable person . . . would believe that the victims might be witnesses." (R. 73:17.)

Finally, the circuit court concluded that one of the purposes of the threat was because the victims were witnesses. It noted that the CHIPS case had lasted many months. (R. 73:20.) It knew that Guyton had complained at many stages of the proceeding and that the phone call seemed to the last straw for Guyton. (R. 73:20–21.) The court concluded Guyton's threats "were meant to stop the perceived harassment" and that Guyton "knew that his complaints might be redressed in some sort of court proceeding." (R. 73:23.)

The court sentenced Guyton to a total of three years initial confinement and three years of extended supervision for each count, and it ran the counts concurrent with each other. (R. 53.)

Guyton appeals. (R. 61.)

STANDARD OF REVIEW

Whether the evidence is sufficient to sustain a guilty verdict is a mixed question of law and fact. *State v. Lala*, 2009 WI App 137, ¶ 8, 321 Wis. 2d 292, 773 N.W.2d 218.

Under this standard this Court will not reverse the conviction unless the evidence, viewed most favorably to the State and the conviction, is "'so insufficient in probative value and force' that as a matter of law no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *Id.* When this Court "review[s] the [circuit] court's findings of historical fact, these findings will be upheld unless clearly erroneous or incredible as a matter of law." *Id.* Finally,

whether these factual findings support the conviction is a question of law that this Court reviews de novo. *Id.*

ARGUMENT

The evidence at trial was sufficient to support Guyton's convictions for threats to a witness.

Guyton argues that the State presented insufficient evidence to convict him of threats to witnesses. (Guyton's Br. 10–26.) Specifically, he argues that the State failed to prove (1) that D.G. and C.M. were witnesses, (2) that Guyton knew or should have known that any of the five victims were witnesses, and (3) that he made the threat because they were witnesses. (Guyton's Br. 14–26.) Notably, Guyton does challenge the State's evidence that he intentionally threatened the five victims and that the victims did not consent.

This Court should reject Guyton's sufficiency challenges. The State presented sufficient evidence to show that Guyton threatened each of the five witnesses. Accordingly, Guyton is not entitled to relief.

A. Legal principles

A defendant "bears a heavy burden" on appeal when challenging the sufficiency of the evidence to support a conviction. *State v. Klingelhoets*, 2012 WI App 55, ¶ 10, 341 Wis. 2d 432, 814 N.W.2d 885. "It's very difficult for a defendant to convince an appellate court that the evidence presented to a [factfinder] was insufficient to support a conviction." *United States v. Meza-Urtado*, 351 F.3d 301, 302 (7th Cir. 2003). The State is not required to prove a defendant's guilt beyond a reasonable doubt on appeal. *State v. Poellinger*, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990).

When determining whether evidence at trial was sufficient to support a conviction, an appellate court "consider[s] the evidence in the light most favorable to the State and reverse[s] the conviction only where the evidence 'is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" *State v. Smith*, 2012 WI 91, ¶ 24, 342 Wis. 2d 710, 817 N.W.2d 410 (quoting *Poellinger*, 153 Wis. 2d at 507). "Therefore, this court will uphold the conviction if there is any reasonable hypothesis that supports it." *Id.* "[A]n appellate court must consider the totality of the evidence when conducting a sufficiency of the evidence inquiry." *Id.* ¶ 36.

A factfinder gets to determine the credibility of witnesses, weigh evidence, and resolve conflicts in testimony. *Poellinger*, 153 Wis. 2d at 503, 506. A factfinder may, "within the bounds of reason," resolve conflicting inferences by adopting an inference consistent with guilt. *Id.* at 506–07. This Court must accept a circuit court's inference "unless the evidence on which that inference is based is incredible as a matter of law." *Id.* at 507.

Moreover, "a finding of guilt may rest upon evidence that is entirely circumstantial." *Poellinger*, 153 Wis. 2d at 501. Often, circumstantial evidence is "stronger and more satisfactory than direct evidence." *Id.* Because direct evidence is "seldom . . . available as to each and every element of an offense," "the state may rely in whole or in part upon circumstantial evidence" in "proving its case." *State v. Bowden*, 93 Wis. 2d 574, 583, 288 N.W.2d 139 (1980), *overruled on other grounds in Poellinger*, 153 Wis. 2d at 504 n.5.

A person is guilty of threats to a witness when that person, "Intentionally causes bodily harm or threatens to cause bodily harm to a person who he or she knows or has reason to know is or was a witness by reason of the person having attended or testified as a witness and without the

consent of the person harmed or threatened." Wis. Stat. § 940.201(2)(a).

B. The State presented sufficient evidence to convict Guyton.

Viewing the evidence in the light most favorable to the verdicts, the State proved that Guyton was guilty of five counts of threats to a witness.

To prove that Guyton committed the crime of threat to a witness, the State needed to show that, as to each victim: (1) Guyton threatened to cause bodily harm to the victim; (2) the victim was a witness; (3) Guyton knew or had reason to know that the victim was a witness; (4) Guyton threatened bodily harm without the victim's consent; and (5) Guyton acted intentionally.[3] *See* Wisconsin JI-Criminal 1238 (2004).

The parties agree that Guyton threatened to cause bodily harm to each victim, that he did to without the victims' consent, and that he acted intentionally. It is therefore uncontested that those three elements of the crime were met in this case as to each victim, and the State does not address them further.

1. The State presented sufficient evidence that D.G. and C.M. met the legal definition of witnesses.

Guyton first argues that D.G. and C.M were not witnesses under the legal definition. His claim fails. Each victim met the definition of a witness, because each had

[3] The jury instruction articulates a sixth element: that the defendant threatened to cause bodily harm to the victim because the person attended or testified as a witness. Wis. JI-Criminal 1238. It states that, "This element is drafted for a case where the person has attended or testified." *Id.* at n.6. It does not apply to the facts of this case.

relevant information and was subject to call or likely to be called as a witness.

In relevant part, Wis. Stat. § 940.41(3) defines a witness as "any natural person who has been or is expected to be summoned to testify" or "who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not any action or proceeding has as yet been commenced." A witness can be someone who has testified or is expected to testify. Wis. Stat. § 940.41(3).

To start, Guyton conceded at trial that the State proved that D.G. and C.M. were witnesses. In closing, he argued that "There is little dispute that the named victims meet the definition of witness under the jury instruction." (R. 43:5.) During its oral ruling, the court accepted that concession. (R. 73:5.) Now, Guyton withdraws that concession and argues that the State failed to produce evidence of a proceeding where D.G. or C.M. was expected to testify. (Guyton's Br. 15.)

The State presented evidence that D.G. and C.M. were witnesses as defined by statute:

D.G. was a witness subject to call or likely to be called in a future case with Guyton, including a termination of parental rights case, a post-dispositional matter regarding his CHIPS case, or a potential child abuse case if the allegation rose to the level of a crime. (R. 65:133–35.)

C.M. was a potential witness in a proceeding involving Guyton. C.M. testified that she might have to testify at a post-dispositional CHIPS hearing or a termination of parental rights hearing. (R. 65:185.)

The State therefore met its burden to prove that D.G. and C.M. were witnesses. *See* Wis. Stat. § 940.41(3); Wis. JI-Criminal 1238.

Guyton argues that the State was required to prove that D.G. and C.M. were "expected" to testify. (Guyton's Br. 14–15.) By doing so, Guyton ignores the second definition of a witness—a person "who by reason of having relevant information is subject to call or likely to be called as a witness." Wis. Stat. § 940.41(3).

D.G. had relevant information regarding potential future proceedings: She received at least eight letters from Guyton complaining about his son's placement. (R. 65:116.)

C.M. had relevant information as well: She also became involved in Guyton's case after he sent letters to DHS complaining about its treatment of his case. (R. 65:167.) These letters could become relevant in a future hearing regarding placement of Guyton's son. D.G. and C.M. would then be at least be subject to call, and C.M. would likely have been called to testify.

Guyton claims that *McLeod v. State*, 85 Wis. 2d 787, 790, 271 N.W.2d 157 (Ct. App. 1978), defined a witness in a way that excludes D.G. and C.M. (Guyton's Br. 14–15.) The court in *McLeod*, interpreted a prior battery statute defining "witness," Wis. Stat. § 943.30(3)(b) (1975–76), to determine whether the definition of a witness was limited to a person who already testified, or whether it could include a prospective witness. *McLeod*, 85 Wis. 2d at 790.

In furtherance of that analysis, the court interpreted, the first part of the definition of a "witness," and it did not consider the second part of the definition—someone "who, by reason of having relevant information is subject to call or likely to be called as a witness." *McLeod*, 85 Wis. 2d at 789 (*citing* Wis. Stat § 943.30(3)(b) (1975–76)). That decision does not exclude D.G. and C.M, but the Court rejected the idea that a person had to have already testified, and it noted the broader language in the statute.

Guyton also relies upon cases from other jurisdictions interpreting other definitions of witness to argue that D.G. and C.M. were not witnesses. (Guyton's Br. 15.) Those cases offer no support. In *Walker v. U.S.*, 93 F.2d 792, 795 (8th Cir. 1938), the government needed to prove that the person was "intended to be a witness" in that case. In *United States v. Grunewald*, 233 F.2d 556, 571 (2d Cir. 1956), *rev'd by Grunewald v. United States*, 353 U.S. 391 (1957), the government needed to prove that the witnesses were expected to testify before a grand jury. Finally, in *United States v. Jackson*, 513 F.2d 456, 460 (D.C. Cir. 1975), the government needed to prove that the person was still a witness because the proceeding was still pending, and the threats were to intimidate him to not testify. These cases offer no guidance here.

Guyton attempts to heighten the burden the State had to prove that the victim was a witness under Wisconsin's statute. He argues that the State needed to articulate exactly what proceedings the person would testify at and how the information was relevant at such a hearing. (Guyton's Br. 16–17.) Notably, Guyton cites no legal support for his argument. And the statute does not require that level of certainty as to the nature of precisely how the person would be a witness. Instead, the statute requires the State to prove that the victim was a witness that "ha[d] relevant information" and was "subject to call or likely to be called as a witness." Wis. Stat. § 940.41(3). The State met its burden.

2. The State presented sufficient evidence that Guyton knew or should have known that the victims were witnesses.

Next, Guyton argues that he did not know or have reason to know that the victims were witnesses under the statute. The State was required to prove that the defendant

knew or had reason to know is or was a witness. Wis. Stat. § 940.201(2)(a); Wis. JI-Criminal 1238.

Guyton's own trial testimony rebuts his claim. And, again, the State met its burden to prove this element regarding each of the five victims.

Guyton understood the CHIPS process. He knew that prior to his arrest in December 2016, he had custody of his son. (R. 66:11.) Upon arrest, the DHS placed his son with his maternal grandmother, and that placement made Guyton angry. (R. 66:13–14.) Guyton attended three hearings and at the last pled no-contest and admitted that his son needed protective services. (R. 66:19–20.) He knew that DHS employees often testify in CHIPS cases. (R. 66:32.)

At trial, Guyton testified that he planned to reopen his CHIPS case and attempt to regain custody of his son. (R. 66:29.) Guyton testified that he was "aware that in their capacity as caseworker, a caseworker or social worker might testify in a CHIPS proceeding . . . related to [his] child." (R. 66:32.) Further, he agreed if DHS changed his ability to have contact with his son, there would be a hearing and that each of the women that he named would testify. (R. 66:51.)

Based on his own testimony, he knew that the situation regarding the wellbeing of his son was an ongoing process, and that during that process, DHS employees often testify. His own testimony was thus proof that he knew that the DHS employees were potential witnesses. *See* Wis. Stat. § 940.201(2); Wis. JI-Criminal 1238.

As the circuit court concluded following the evidence, Guyton "felt wronged in the context of a very specific judicial proceeding, with a specific case number and pleading that was being investigated by a governmental body." (R. 73:17.) Given the evidence at trial, "A reasonable person . . . would believe that the victims might be witnesses." (R. 73:17.) Therefore, the circuit court found that even if Guyton did not know that

the victims were witnesses, he should have known. *See* Wis. Stat. § 940.201(2)(a); Wis. JI-Criminal 1238.

Guyton relies upon *State v. Cotton*, 2003 WI App 154, 266 Wis. 2d 308, 668 N.W.2d 346, to argue that his anger towards the five victims was insufficient to prove that he had reason to know that they were witnesses under the statute. (Guyton's Br. 17–20.) *Cotton* does not apply.

In *Cotton*, this Court examined whether the defendant could be convicted of a threat to a detective who recognized Cotton as a potential witness in a homicide investigation, where Cotton's cousin was the primary suspect. *Cotton*, 266 Wis. 2d 308, ¶ 4. The State conceded that there was no direct evidence that Cotton knew that the detective was likely to be called as a witness at his cousin's proceedings. *Id.* ¶ 21. Instead, the State argued that Cotton's anger towards the detective allowed the inference that he knew the detective as a witness. *Id.* The court found that the State failed to meet his burden.

The facts are completely different in this case. Guyton knew that each of the five victims had some involvement in his CHIPS case. He met personally with M.E. and A.L. (R. 65:39, 235.) He wrote letters to D.C. and C.M. (R. 65:116, 164.) He talked to B.C. on the phone a number of times. (R. 65:201–02.) The State did not base its proof of this element of each crime on Guyton's anger alone, but instead based it on his knowledge that each woman played a part in the CHIPS proceedings that made Guyton angry. The State met its burden.

Guyton complains about the testimony regarding a civil lawsuit filed against DHS, and he argues that it was "purely hypothetical." (Guyton's Br. 21.) But he ignores his own testimony that he planned to file a civil lawsuit against the DHS employees. (R. 66:23.) He testified that eventually he

realized that he did not have a basis for a civil lawsuit, but he did not testify to when he realized that. (R. 66:23.)

The circuit court properly found that Guyton knew the victims were witnesses based on his own testimony. *See* Wis. Stat. § 940.201(2)(a); Wis. JI-Criminal 1238. The State met its burden.

3. The State did not have to prove that Guyton threatened the victims because they would be witnesses.

Finally, Guyton argues that the State failed to prove that he threatened the victims because they were witnesses. But the State was not required to prove that element. The jury instruction notes explain that the element at issue—that the defendant threatened to cause bodily harm to the victims because they were witnesses—only applies when a victim has attended or testified, and does not apply when the person is expected to be summoned to testify. Wis. JI-Criminal 1238, n.4, 6.

The language in the jury instruction comports with the statutory language. The plain text of the statute does not require any finding of proof that the defendant made the threat because the victim was a witness. Instead, in its entirety, the statute finds guilt when a person,

> Intentionally causes bodily harm or threatens to cause bodily harm to a person who he or she knows or has reason to know is or was a witness by reason of the person having attended or testified as a witness and without the consent of the person harmed or threatened.

Wis. Stat. § 940.201(2)(a).

Thus, the statute itself contains no requirement that the defendant threatened the victim *because* the victim was a witness. Accordingly, this Court need not consider Guyton's argument further.

But even though the State need not prove this element, there was sufficient evidence presented that supports the conclusion that Guyton threatened the victims because they were witnesses. Each of the five victims testified that they believed that they could have been called to testify in a post-dispositional CHIPS hearing, a termination of parental rights hearing, or a criminal trial. (R. 65:73, 133, 184–85, 220–21, 235.)

First, there had been an ongoing CHIPS case involving Guyton. (R. 65:34.) Guyton knew that each of these women were involved in that case. (R. 66:27.) He testified that he named the five women because he believed that as a unit, they violated his parental rights. (R. 66:27.) He planned to reopen his CHIPS case to regain custody of his son. (R. 66:29.)

Second, Guyton repeatedly complained to DHS throughout the process, in an attempt to get the employees to change their positions on placement of his son. (R. 66:14.) He wanted these employees to be fired from DHS. (R. 66:26.)

The circuit court concluded that one of the purposes of the threat was because the victims were witnesses. It noted that the CHIPS case had lasted many months. (R. 73:20.) It knew that Guyton had complained at many stages of the proceeding and that the phone call seemed to the last straw for Guyton. (R. 73:20–21.) The court concluded Guyton's threats "were meant to stop the perceived harassment" and that Guyton "knew that his complaints might be redressed in some sort of court proceeding." (R. 73:23.)

The court's conclusion was reasonable. The evidence established that Guyton would not want the DHS employees to testify consistent with their previous positions, because he wanted them to change their opinions about placement of his son.

In his brief, Guyton cites to the intimidation of a witness jury instruction to argue that the State needed to prove the defendant threatened to cause bodily harm because the person was likely to testify as a witness. (Guyton's Br. 22–23.) He attempts to merge the two different crimes and then argue that the State failed to meet his burden to prove a threat to a witness. Guyton's attempt fails.

Contrary to Guyton's assertions, a threat to witness does not require that the threat be made to interfere with the legal process. Guyton sets up this argument and knocks it down. In so doing, he creates a misleading argument rather than addressing the appropriate statutory language. The instruction regarding intimidation of a witness has no application here. It is a different crime with different elements. It serves no purpose to consider that instruction.

Guyton argues that the statutory purpose of the crime of threat to a witness is to stop defendants from preventing witnesses to testify at trial. (Guyton's Br. 10) He then asserts that requiring proof that the threats were to keep the victims from testifying is consistent with that purpose. (Guyton's Br. 23.)

In doing so, Guyton relies upon the purpose of a former version of a similar statute that was repealed. In 1969, the Legislature passed Wis. Stat. § 940.206 entitled "Battery of witnesses and jurors." 1969 Wis. Act 252, sec. 16. It created the statute that read:

> Whoever causes bodily harm to a person who is or was a witness as defined in s. 943.30 (3) (b) or a grand or petit juror with intent to cause bodily harm to that person by reason of his having attended or testified as a witness or by reason of any verdict or indictment assented to by him, without consent of the person injured, may be fined not more than $10,000 or imprisoned not more than 5 years or both.

1969 Wis. Act. 252, sec. 16. That statute was repealed in 1977. *See* 1977 Wis. Act 173, sec. 16.

The statute under which the State charged Guyton, Wis. Stat. § 940.201, was created 20 years later, in 1997. *See* 1997 Wis. Act 143, sec. 5. At that time, the intimidation of a witness statute existed.

The Legislature enacted Wis. Stat. § 940.201 to expand the law; by the new statute, it criminalized intentionally causing "bodily harm or threaten[ing] to cause bodily harm to a person who he or she knows or has reason to know is or was a witness by reason of the person having attended or testified as a witness and without the consent of the person harmed or threatened." 1997 Wis. Act 143.

The purposes behind the 1969 Act and the 1997 Act are different. Guyton's argument that the legislative purpose that applied to a different statute in 1969 should apply to Wis. Stat. § 940.201 is accordingly without merit.

The State is not required to prove that he threatened the victims because they were witnesses. *See* Wis. Stat. § 940.201(2)(a); Wis. JI-Criminal 1238 n.6. Even if it were required, the State presented evidence that Guyton planned to reopen his CHIPS proceeding and that he knew that the five named victims would be witnesses at that proceeding. Further, the evidence established that, in part, Guyton hoped they would change their position on custody of his son. The State thus proved that Guyton intentionally threatened the witnesses without their consent when he knew that they were witnesses. *See* Wis. Stat. § 940.201(2)(a); Wis. JI-Criminal 1238. It met its burden.

Viewing the evidence in the light most favorable to sustain Guyton's convictions for threats to a witness, the circuit court could reasonably conclude that the victims were witnesses and Guyton knew that they were witnesses. This Court should affirm the judgment of conviction finding Guyton guilty of five counts of threats to a witness.

CONCLUSION

This Court should affirm Guyton's judgment of conviction.

Dated this 17th day of January 2019.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5722 words.

_____
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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Dated this 17th day of January 2020.

_____
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