

IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff/Appellee,	)	Supreme Court No. 20190394
	)	
-vs-	)	Burleigh County Case No.
	)	08-2019-CR-00555
Michael T. Blake,	)	
	)	
Defendant/Appellant	)	

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**BRIEF OF PLAINTIFF - APPELLEE  
STATE OF NORTH DAKOTA**

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APPEAL FROM VERDICT OF GUILTY AND CRIMINAL JUDGMENT ENTERED  
ON DECEMBER 3, 2019

Burleigh County District Court  
South Central Judicial District  
The Honorable Daniel Borgen, Presiding

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## **JURISTICTIONAL STATEMENT**

[¶1] The appellant, Michael T. Blake (hereinafter “Blake”), appeals the trial court’s criminal judgment entered after a jury found Blake guilty of one count of Unlawful Entry into a Vehicle (Count 1) and one count of Terrorizing (Count 2) on September 12, 2019. The North Dakota Supreme Court has jurisdiction to hear such appeal under North Dakota Century Code § 29-28-06(1).

## **ISSUES PRESENTED FOR REVIEW**

[¶2] I. Whether Bradford’s actions or inactions void the crime of Unlawful Entry Into a Vehicle, committed by Blake.

II. Whether Blake’s actions and words toward Branford during the offense constituted a threat sufficient to convict him of terrorizing.

## STATEMENT OF THE CASE

[¶3] On February 22, 2019, the Burleigh County State’s Attorney’s Office charged Michael T. Blake (“Blake”) with two criminal counts: 1) Unlawful Entry Into a Vehicle, a Class C Felony, in violation of N.D.C.C. §12.1-22-04(1)(b); and 2) Terrorizing, a Class C Felony, in violation of N.D.C.C. §12.1-17-04(1). *See* Appellant’s Appendix at pages 3-4 (Doc. ID# 1) (App’s Appx at p.p. 3-4 (Doc. ID. # 1)). Blake plead not guilty to both counts and a jury trial was scheduled.

[¶4] On September 12, 2019, a one-day jury trial was held and Blake was convicted on both counts. A criminal judgment was entered on December 3, 2019. *Id.* at p. 6 (Doc. ID# 82). On Count 1, Blake was sentenced for three (3) years of incarceration in the North Dakota Department of Corrections and Rehabilitation (ND DOCR), first serve 287 days, balance suspended for three (3) years of supervised probation with credit for time served - 286 days; and on Count 2, he was sentenced for three (3) years of incarceration with the ND DOCR, first serve 287 days, balance suspended for three (3) years of supervised probation with credit time served for 286. Both Counts to run concurrently. *Id.* at p.p. 8–10.

[¶5] On December 11, 2019, Blake filed a Notice of Appeal with district court. *Id.* p. 7 (Doc. ID# 84).

## STATEMENT OF FACTS

[¶6] On February 21, 2019, Adelann Bradford (“Bradford”) stopped at the Unistop Super Pumper gas station on her way home to pick up a pack of cigarettes and a single beer and then was going to go home to make supper. Trial Transcript (“Tr.”) page 23:lines 18-23 (“23:18-23”). When Bradford was in the gas station she noticed a man that appeared to be either intoxicated or under the influence of something other than alcohol. Tr. 24:17-22. The man was on crutches, had a medical boot on his foot, and was dressed in all black. Tr. 25:22 – 26:16.

[¶7] After exiting the gas station, Bradford went back to her vehicle to head home. Tr. 27:16-21. Bradford pulled out onto Utah Avenue and was going to make a right hand turn onto 19<sup>th</sup> Street when she noticed the same man dressed in black on the corner. Tr. 27:16-25 – 28:1. As Bradford was waiting for the light to change, the man dressed in black got into her vehicle. Tr. 28:7-9. Once he got into the vehicle he told Bradford to drive. Tr. 28:19-20; 31:25 – 32:1. Bradford was scared as the man had one of his hands inside his sweatshirt, gesturing when she was driving, and that hand never left his sweatshirt. Tr. 30:20-23. After driving around the town, trying to find the place where the man was going to and not finding it, he told Bradford to take him to the YMCA. Tr. 35:4-5.

[¶8] After dropping him off at the YMCA, Bradford headed back to her house, she was trying not to have a panic attack and stay calm and get home so that she could call law enforcement. Tr. 37:16-21. During this encounter Bradford stated that she felt threatened by the man because he just got into her vehicle he told her to go places and

then he would get irritated because she could not find the place where he wanted to be and he did not make sense. Tr. 57:6-9.

[¶9] After Bradford called 911, law enforcement was dispatched and Officer Berger went to the YMCA to investigate. Tr. 74:19-25. Once Officer Berger entered the YMCA he observed a man, who he later identified as Michael Blake, sitting on the chair in the lobby area dressed in all black with crutches and a backpack up against a wall. Tr. 75:17-21.

## LAW AND ARGUMENT

### I. Whether Bradford's actions or inactions void the crime of Unlawful Entry Into a Vehicle, committed by Blake.

[¶10] The State presented evidence sufficient to support the jury's verdict on both counts: (1) Unlawful Entry Into a Vehicle, and (2) Terrorizing. In determining whether there was evidence sufficient to support a guilty verdict, this Court has stated:

In reviewing challenges to the sufficiency of the evidence, we view the evidence and reasonable inferences in the light most favorable to the verdict. A conviction rests upon insufficient evidence only when no rational fact finder could have found Blake guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor. In reviewing challenges to the sufficiency of the evidence, we do not reweigh the conflicting evidence, nor judge the credibility of witnesses.

*State v. Roe*, 2014 ND 104, ¶ 21, 846 N.W.2d 707 (quoting *State v. Estrada*, 2013 ND 79, ¶ 33, 830 N.W.2d 617). Furthermore, “[a] verdict based upon circumstantial evidence carries the same presumption of correctness as other verdicts and will not be disturbed on appeal unless the verdict is unwarranted.” *State v. Olson*, 290 N.W.2d 664, 670 (N.D. 1980).

[¶11] The jury was provided with the following instructions on Count 1:

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

- 1) On or about the 21<sup>st</sup> day of February 2019;
- 2) in Burleigh County, North Dakota;
- 3) Defendant, Michael Blake;
- 4) Without the use of force, but with the intent to commit a crime;
- 5) Willfully entered a vehicle, namely Adelann Bradford's vehicle.



As shown in the jury instructions, the State did not need to prove the use of force, thus, Blake's argument that he did not use force to enter Bradford's vehicle is without merit. Blake does not dispute the facts of the case, but he disagrees with the "perception of these facts." App's Brief at ¶ 39. Blake asserts that "while this incident occurred, it does not appear that Bradford effectively conveyed any discomfort she felt to Blake." *Id.*

[¶12] Assuming Blake's story is true, the outcome of his story contradicts the evidence presented at trial. According to Blake, Bradford offered him a ride, made a U-turn to pick him up, helped him to get into her vehicle, smoked a cigarette, drank a beer while driving him around, had small-talk conversation with him, then dropped him at the YMCA, and left. Tr. 112-125. There is nothing in Blake's story that would trigger Bradford's being hysterical, crying, and unable to talk in full sentences. If she would just give Blake a ride in a way he had described it, she would drive straight home to her son and husband and would not remember about giving a ride to a stranger within a couple of days. But that was not the case.

[¶13] Both Bradford's husband, Bruce Shaw, and Police Officer Zachary Hayden observed Bradford's demeanor between 20 to 60 minutes after the offense. Both of them testified that she was crying, hysterical, her hands were shaking and she was not able to speak. Bruce Shaw described that Bradford "was extremely agitated, somewhat hysterical, she was shaking. She appeared to be scared. . . She started to try to tell me but she couldn't really communicate effectively for a little while after she got home." Tr. 69:7-9. When Bradford was going to call 911, her husband had to tell her "you can't even talk to me. Just, you know, sit down for a minute and gather your thoughts." Tr. 69:19-21.

When Officer Hayden arrived at Bradford's residence, he found her "hysterical, crying, shaking. . . it took her some time to get the words out." Tr. 95:17-23.

[¶14] Clearly, the State witnesses' testimonies contradict Blake's peaceful story about a lady who volunteered to give him a ride, and the jury did not believe his story for a reason. That reason was Bradford's demeanor after she came home and while she was describing the incident to a police officer. Bradford's being hysterical, crying, and shaking was a result of a post-traumatic reaction after she was exposed to a traumatic event.

Exposure to traumatic events triggers physical reactions. The amygdala, located within the brain, is connected to key anatomical targets that in turn activate several body systems including, among others, the sympathetic and parasympathetic nervous systems, the respiratory system, increases reflexes, release of certain neurotransmitters and hormones, and musculoskeletal movement. Most significantly, an individual experiencing fear goes into a heightened state of alertness resulting from a sudden rush of adrenalin. Focus is directed on the threat and other needs, such as hunger, pain or fatigue, are entirely forgotten in the moment. There may be a "fight or flight" instinctive response, even if neither option is available.

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The exposure to a traumatic event triggered a survivor's reaction from Bradford that kept her calm outside and focused on surviving inside because she ought to survive for her family that was waiting for her return;

however, after the traumatic event was over, Bradford's stress released through crying, shaking, and being hysterical.

[¶15] “Fight or flight” instinctive response brings us to Blake’s argument that Bradford did not fight Blake out of the car and “[s]he did not take other reasonable measures to protect herself. She did not even think of reaching for the baseball bat she kept in the van. She did not try to call police from her cell phone. She did not attempt to drive to the police station, park the van, or attempt to exit the van.” App’s Brief at ¶ 42. Bradford stated in her testimony that when Blake entered her car, “I was -- kind of froze and I did not know what to do . . . I was just scared.” Tr. 29:2-5. As she indicated herself, “I’m 5’4 and 115 pounds. A fifth grader could take me out.” Tr. 32:10-11. When Blake entered Bradford’s vehicle, when he refused to leave, and when she realized that she is one-on-one with a stranger in her own car, her survivor’s instincts kicked in, as she explained, “I thought if I was just nice to him that he’d be okay, and so I said, ‘Hi,’ like, ‘my name is Adele, and I have a little boy named R., what’s your name?’” Tr. 29:15-17. Bradford simply knew from the beginning she would not be able to outfight a man, but she would definitely escalate the situation by trying. As was discussed above, different people respond to traumatic situations differently; based on the facts and evidence of this case, Bradford obviously was not a fighter, but the “flight” option also was not available to her.

[¶16] There are no requirements for a victim of a crime to fight back in order to prove that the crime occurred. Furthermore, most of the current survivor’s instructions lean towards non-confrontational responses to a situation that may quickly rise to a criminal offense. For example, when Police Officer Cody Berger arrived at YMCA and met Blake in the lobby, he engaged in a small-talk with Blake as well. As Officer Berger explained

in his testimony, “[b]ecause I don’t know exactly who I am dealing with so I don’t want to give somebody an excuse to do something that, you know that would be to a – make them a little amped up or want to fight either with words or physically.” Tr. 78:20-23. Thus, Blake’s assertions that Bradford did not “effectively conveyed any discomfort she felt to Blake” and did not fight back are without merit and do not render the State’s evidence insufficient.

**II. Whether Blake’s actions and words toward Bradford during the offense constituted a threat sufficient to convict him of Terrorizing.**

[¶17] Blake argues because he made no verbal threats to Bradford, his conduct does not meet the threat element of Terrorizing. App’s Brief at ¶ 42. This Court held that a threat does not have to be made verbally. “No precise words are necessary to convey a threat. It may be bluntly spoken or done by innuendo or suggestion.” State v. Hass, 268 N.W.2d 456, 463 (N.D. 1978) (internal citation omitted). Whether particular words constitute a threat is a question of fact. State v. Zeno, 490 N.W.2d 707, 710 (N.D. 1992). The threat “could be in words, verbal or written, actions, gestures, suggestive innuendo, or any other form of communication.” State v. Liab, 705 N.W.2d 815, 817 (N.D. 2005). “No precise words are necessary to convey a threat. It may be bluntly spoken, or done by innuendo or suggestion . . . A threat often takes its meaning from the circumstances in which it is spoken and words that are innocuous in themselves may take on a sinister meaning in the context in which they are recited.” State v. Howe, 247 N.W.2d 647, 654 (N.D. 1976). Thus, when deciding whether or not Blake threatened Bradford the jury assessed the totality of the circumstances without separating Blake’s words from his actions at the time of the offense.

[¶18] Blake recklessly disregarded the fact that his uninvited entrance into a vehicle driven by a woman will scare her. In addition to his appearance (“he was dressed entirely in black, even down to a black foot cast” (App’s Brief at ¶ 40), “a scatter-shot speech pattern and . . . disjointed thought pattern” (*by the admission of his own attorney*) (*Id.*), Blake acted dangerously by having one of his hand in the pocket and pointing at driving directions with that hand without taking it out of pocket. While Blake argues that he kept his hand in the pocket with an intent to warm it up, a woman who was already scared by his presence in her car had a very different perception of that hand; she honestly believed that Blake had a handgun, a knife, or any type of weapon that could be carried in a pocket and, therefore, her life was in danger unless she followed Blake’s driving directions. Tr. 31:17-22.

[¶19] When Bradford introduced herself to Blake and told him that she had a little boy, he responded, “Oh, I know who you are.” Tr. 29:15-19. When her phone rang, he said, “Don’t you dare answer it.” Tr. 54:25. The whole idea that she was watched by a stranger, who was now sitting in her car and ordering her to drive where he wanted added even more terror to Bradford. From that point, the situation could have developed into any type of crime: kidnapping, rape, murder, or human trafficking. If Blake would not have an intent to terrorize Bradford, he would act and speak differently; however, he chose to terrorize her by his actions and words, to take advantage of her frozen state and helplessness, so he could use her vehicle as a source of free transportation, and to use her as a free driver. As a result, Blake’s actions, in combination with his behavior, his appearance, and his words constituted a direct threat to Bradford, forcing her to drive him around, following his

directions, obeying his orders, and finally dropping him at the place of his choice. Thus, the State provided sufficient evidence to the jury to find Blake guilty of Terrorizing.

### CONCLUSION

[¶20] Firstly, Blake's perception of Bradford's actions, words, and physical appearance on the day of offense does not change the fact that Blake committed the crime of Unlawful Entry Into a Motor Vehicle and the State proved all elements of it. Secondly, Blake's conduct on the day of offense taken as a whole and reviewed under totality of circumstances constituted a threat to Bradford. She was scared for her life, and her mental and physical state after the offense clearly indicated that she was affected by exposure to a traumatic event. Finally, the State provided sufficient evidence to prove all elements of both criminal offenses, and, therefore, the State respectfully requests that this Court affirm the district court's Judgment.

RESPECTFULLY SUBMITTED:

Dated this 29 day of April, 2020.

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Michael T. Blake,	)	
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**CERTIFICATE OF COMPLIANCE**

[¶ 1] COMES NOW Anna A. Argenti of Bismarck, North Dakota, and hereby certifies that the attached Brief of the Appellee is in compliance with Rule 32(a)(8)(A), North Dakota Rules of Appellate Procedure.

[¶ 2] The number of pages in the principal Brief, excluding any addenda, is fourteen (14) pages, according to the page count of the filed electronic document.

Dated this 29 day of April, 2020.

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STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF BURLEIGH )

I, Amanda Hastig, declare that I am a United States citizen over 21 years of age, and on the 29th day of April, 2020, I served the following:

1. Brief of Plaintiff-Appellee
2. Certificate of Compliance
3. Unsworn Declaration of Service by Electronic Filing

on the following electronic transmission to the listed email address of:

Russell J Myhre  
Defense Attorney  
[efile@myhrelaw.com](mailto:efile@myhrelaw.com)

which address is the last known email address of the addressee.

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 29<sup>th</sup> day of April, 2020 at Bismarck, North Dakota.

/s/ Amanda Hastig  
Amanda Hastig