

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DONALD SNIDER,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 193857

Recorder's Court

LC No. 95-005006

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of aggravated stalking, MCL 750.411i; MSA 643(9), and subsequently, was sentenced to two years' probation. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court improperly admitted hearsay testimony from a police lieutenant regarding contacts the defendant had with the victim after a "no contact" order had been imposed on defendant. We disagree. Because the lieutenant's testimony was cumulative of the victim's properly admitted testimony on direct examination, we hold that, even assuming the evidence was inadmissible hearsay, its admission was harmless. See *People v Dixon*, 161 Mich App 388, 396; 411 NW2d 760 (1987).

Defendant next argues that he was denied a fair trial because the prosecution was allowed to offer improper rebuttal evidence about the victim reporting to the police her telephone contact with defendant. We disagree. The admission of rebuttal evidence rests within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *People v Figgures*, 451 Mich 390, 398; 547 NW2d 673 (1996). Because the prosecution's entire rebuttal case was cumulative of other evidence that had already been properly admitted, we hold that, even assuming that the rebuttal evidence was improperly admitted, the error was harmless. *People v DeLeon*, 103 Mich App 225, 230; 303 NW2d 447 (1981).

Next, we find without merit defendant's contention that the evidence was insufficient to support his conviction of aggravated stalking. When reviewing the sufficiency of evidence in a criminal case, this

Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Baker*, 216 Mich App 687, 689; 551 NW2d 195 (1996).

The crime of aggravated stalking requires proof of “stalking” plus any one of four aggravating circumstances. See MCL 750.411i(2); MSA 28.643(9)(2); *People v Kieronski*, 214 Mich App 222, 229; 542 NW2d 339 (1995). Stalking is established by a showing of a (1) willful (2) course of conduct involving (3) repeated or continuing (4) harassment of another individual (5) that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and (6) that actually causes a the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. See MCL 750.411i(1)(f); MSA 28.643(9)(1)(f). The aggravating circumstance relevant to this case is established by a showing that the actions constituting stalking were in violation of a condition of pretrial release. See MCL 750.411i(2)(b); MSA 28.643(9)(2)(b).

Here, the evidence presented at trial established that after being charged with kicking in the door of the victim’s house, defendant’s pretrial release order directed that he have “no contact” with the victim, including telephone calls. Despite the order, defendant placed frequent telephone calls to the victim at all hours of the day. In these calls, defendant threatened to kill the victim, take their daughter away from her, and knowing her fear of heights, threatened to take her to the thirty-seventh floor of a building. We hold that, based on these facts, a rational trier of fact could have found the essential elements of aggravated stalking to be proven beyond a reasonable doubt.

Finally, defendant argues that a statement by the trial court during the course of the trial indicated that the trial court was biased against defendant. We disagree. The defendant in a criminal trial is entitled to expect a neutral and detached magistrate. *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). In a bench trial, reversible error exists when it appears to this Court that the conduct of the trial court established prejudgment of the defendant’s guilt. See *People v Birts*, 16 Mich App 237, 241; 167 NW2d 829 (1969), citing *People v Petrill*, 292 Mich 139, 144-145; 290 NW 358 (1940). Here, because the statement relied on by defendant to establish bias by the trial court was made during an evidentiary ruling in which the trial court ruled in defendant’s favor, we hold that the trial court’s conduct did not evidence any bias or prejudgment of defendant’s guilt.

Affirmed.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra