

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARVIS D. WHITE,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 214709

Wayne Circuit Court

Criminal Division

LC No. 98-003460

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of aggravated stalking, MCL 750.411i; MSA 28.643(9), felonious assault, 750.82; MSA 28.277, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and domestic violence, MCL 750.81(2); MSA 28.276(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, defendant's former girlfriend, testified that on February 13, 1998 defendant telephoned her home numerous times and threatened to kill her. On February 21, 1998 defendant came to her home. Complainant stated that she admitted him because she was frightened. When complainant refused to answer questions, defendant placed a gun on the floor, kicked her in the head, and suggested that he would use "this," i.e., the gun. Complainant testified that defendant's actions frightened her. She stated that the next day, defendant appeared at her home, took her car keys, and left in her car. After being admitted to a crisis center, defendant denied taking complainant's car, and told her that he should have killed her. Defendant, testifying on his own behalf, denied using the gun in a threatening manner. He admitted that he placed his foot on complainant's neck, but denied kicking her in the face. Defendant asserted that he and complainant engaged in consensual intercourse on February 21, 1998. He admitted that on February 13, 1998 he was told by the court to have no contact with complainant.

* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court found defendant guilty on all counts. The court found complainant's testimony credible, and noted that defendant admitted that he knew that he had been ordered to have no contact with complainant.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

Aggravated stalking occurs when a person who has actual knowledge of a restraining order or injunction engages in a willful pattern of conduct consisting of a series of two or more separate, noncontinuous acts involving repeated or continuing unconsented contact with another person that would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, or harassed, and that actually makes the victim experience such feelings. MCL 750.411i(2); MSA 28.643(9)(2); *People v Kieronski*, 214 Mich App 222, 233-234; 542 NW2d 339 (1995).

Defendant argues that the evidence was insufficient to support his conviction of aggravated stalking. We disagree. Complainant's testimony established that on one day defendant telephoned her numerous times and made threats. Several days later, defendant came to her home uninvited, suggested that he would use a gun to harm her, and physically assaulted her. Complainant testified that defendant's actions frightened her. This evidence, which the trial court, as the trier of fact, was entitled to find credible, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), established that defendant engaged in a course of conduct consisting of two or more unconsented acts that instilled fear in his victim. Defendant's own testimony established that at the time this conduct occurred, he was under a court order to refrain from contacting complainant. This evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of aggravated stalking. *Petrella, supra*.

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). An assault is an attempt to commit a battery or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Defendant argues that the evidence was insufficient to support his conviction of felonious assault. We disagree. Complainant's testimony, which the trial court was entitled to believe, *Marji, supra*, supported a finding that defendant committed an assault with a dangerous weapon in that he used the gun to place complainant in reasonable apprehension of an immediate battery, i.e., a gunshot wound. A defendant's intent to place a victim in fear can be inferred from the circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). The evidence that defendant placed a gun in complainant's sight and indicated that he would use it supported an inference that he intended to instill fear in complainant. This evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of felonious assault. *Petrella, supra*.

The elements of felony-firearm are: (1) the defendant possessed a firearm; (2) during the commission of, or the attempt to commit, a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). The evidence was sufficient to support defendant's convictions of aggravated stalking and felonious assault. He admitted that he possessed a firearm during the events that resulted in these convictions; therefore, his conviction of felony-firearm is affirmed.

Affirmed.

/s/ Roman S. Gribbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington