

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL L. THOMAS,

Defendant-Appellant.

UNPUBLISHED
November 3, 2000

No. 215222
Wayne Circuit Court
LC No. 98-004058

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for stalking, MCL 750.411h; MSA 28.643(8). The court sentenced defendant to one year in jail. We affirm.

On the evenings of July 18, 1997, and July 19, 1997, defendant approached his wife, complainant, at public bus stops. Defendant confronted complainant, from whom he was separated, without her consent and in violation of a personal protection order. Defendant threatened complainant, yelled profanities at her, and attempted to restrain her from boarding a bus. The trial court found defendant guilty of stalking complainant.

On appeal, defendant contends that there was insufficient evidence to support the trial court's finding that defendant's conduct constituted stalking. We disagree. In order for this Court to determine whether a criminal conviction was based on sufficient evidence, this Court must examine the substance of the evidence introduced at trial. *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748, mod on other grounds 441 Mich 1201 (1992), citing *Jackson v Virginia*, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979). The evidence, when viewed in a light most favorable to the prosecution, must justify a rational trier of fact in concluding that the defendant was guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), citing *Wolfe, supra*, 440 Mich 515; *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985).

Because the stalking statute is identical to large portions of Michigan's aggravated stalking statute, MCL 750.441i; MSA 28.643(9), we will analyze case law addressing the aggravated stalking statute.

There are four elements to Michigan's stalking statute. Here, there is sufficient evidence to satisfy each element. First, defendant engaged in a wilful course of conduct. *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995), citing MCL 750.411i(1)(a), (e); MSA 28.643(9)(1)(a), (e). Second, defendant's conduct was repeated or continuous and nonconsensual. *Id.*, citing MCL 750.411i(1)(d), (f)(i-ii); MSA 28.643(9)(1)(d), (f)(i-ii). Third, defendant's conduct would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested. *Id.* at 233, citing MCL 750.411i(1)(d); MSA 28.643(9)(1)(d). Fourth, defendant's conduct actually caused complainant to feel terrorized, frightened, intimidated, threatened, harassed or molested. *People v White*, 212 Mich App 298, 313; 536 NW2d 876 (1995); MCL 750.411h(4); MSA 28.643(8)(4).

Defendant's behavior amounted to a wilful course of conduct, as he "engaged in a series of two or more separate noncontinuous acts evidencing a continuity of purpose, in effect, to 'get [the victim].'" *Kieronski, supra*, 214 Mich App 232. In March of 1996, defendant committed larceny against his own wife, complainant.

On July 18, 1997, defendant made intimidating comments to complainant. He asked her a personal question regarding her relationships with other men. He claimed to be a prophet, foretelling that complainant would be leaving this world and that "something was going to happen in twenty days" that would be on the news.

On July 19, 1997, defendant yelled profanities at complainant within the area of the bus stop and insistently, repeatedly identified complainant as his wife. He shouted that complainant would come crawling back to him and that she "could not get away from him." Defendant claimed these statements were messages sent to him by God. Further, defendant attempted to restrain complainant inside the bus terminal and discouraged a security guard from assisting complainant when she sought help. Sufficient evidence was presented as to the first element of the stalking statute.

There was sufficient evidence that defendant's conduct on these occasions constituted "repeated or continuing unconsented contact" with [complainant] by approaching or confronting her in a public place." *Id.*

Defendant's bus stop altercations with complainant in July 1997, were unconsented. As discussed *supra*, by that time, defendant was well aware that he was to avoid all contact with complainant, yet he approached complainant and harassed her publicly. On July 18, 1997, complainant attempted to avoid further confrontation with defendant by giving no response to defendant's comments, by remaining silent, and by walking away from him. On July 19, 1997, complainant used a different bus stop than on the prior day in case defendant appeared again at the original stop. Defendant interacted with complainant contrary to clear indications that he lacked her consent, thus satisfying the second element of the stalking statute.

Additionally, defendant's conduct "raises an inference that defendant's unconsented contact and apparent threats would cause a reasonable person to suffer significant mental distress" and would cause a reasonable person in complainant's situation to feel terrorized, frightened, intimidated, threatened, harassed or molested. *Kieronski, supra*, 214 Mich App 233. A reasonable trier of fact could easily

have determined that a reasonable person would suffer such distress when her husband, from whom she was seeking a divorce and against whom the court had issued a personal protection order, confronted her publicly as described *supra*.

Furthermore, the above incidents between complainant and defendant occurred amidst a history of physical, mental and emotional abuse of complainant by defendant. Additionally, complainant was aware of defendant's history of psychiatric problems, his short-term commitment to a psychiatric health facility in 1994, and that defendant had, without physician approval, ceased taking his psychiatric medication, without which defendant would become angry, violent, and controlling. Additionally, defendant's claim to complainant on July 18, 1997, that defendant was a prophet, was not an isolated occurrence. Complainant's grandfather provided evidence that defendant has a history of making prophetic claims.

At the time of the July 1997 events, complainant was also aware that, after her separation from defendant, defendant began to make threatening, harassing phone calls to complainant's grandfather. These calls came several times a night and typically included threats that defendant was going to kill complainant's grandfather, as well as her grandfather's wife and grandson. Not only could a trier of fact conclude that a reasonable person in complainant's situation would be distressed by the events of July 1997, a trier of fact could reasonably find that such distress would likely be compounded by complainant's knowledge that defendant had a history of mental illness, and that defendant was harassing and threatening complainant's family.

There is a rebuttable presumption that complainant felt terrorized, frightened, intimidated, threatened and harassed sufficient to satisfy the fourth element of the stalking statute. The trier of fact could have reasonably concluded that this final element was satisfied.

Moreover, there was sufficient evidence to satisfy the fourth element, even without the rebuttable presumption because complainant testified several times to the emotional impact she experienced in response to defendant's conduct. Complainant said that defendant's behavior during the July 1997, bus stop interactions caused her to fear for her life and the lives of her children. Her descriptions of her feelings on July 19, 1997, were that she was scared and embarrassed. Specifically, complainant distinguished the emotional effect of a prior interaction with defendant in May 1997, from the impact of the July 1997, confrontations. In May 1997, defendant accepted an invitation to visit complainant's home. The visit occurred and concluded peacefully. By the time of the July 1997, events at the bus stops, complainant had not seen defendant in a few months and was afraid of what he would do or was capable of doing during these uninvited, unconsented to, threatening interactions. Thus, there was sufficient evidence to satisfy the fourth and final element of the stalking statute.

Affirmed.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Patrick M. Meter