

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAY C. GREEN,

Defendant-Appellant.

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UNPUBLISHED

August 2, 2002

No. 231989

Wayne Circuit Court

LC No. 00-008041

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from a nonjury conviction of aggravated stalking, MCL 750.411i, for which he was sentenced to five years' probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a nonjury criminal case, this Court "is required to review the entire record to determine whether the trial judge clearly erred." *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). This Court must review the record to determine whether there was sufficient evidence to warrant a verdict of guilty beyond a reasonable doubt. *People v Garcia*, 398 Mich 250, 263; 247 NW2d 547 (1976). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The first element of aggravated stalking is that the defendant engaged in stalking. MCL 750.411i(2). Stalking is "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCL 750.411i(1)(e). A "course of conduct" is "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411i(1)(a). Two or more separate noncontinuous acts are acts distinct from one another that are not connected in time and space." *Pobursky v Gee*, 249 Mich App 44, 47; 640 NW2d 597 (2001). The second element is that at least one of the acts constituting the offense is in violation of a restraining order of which the defendant has notice. MCL 750.411i(2)(a).

Defendant does not dispute that he engaged in stalking. He contends, however, that the court erred in finding that he violated a restraining order by entering the victim's house without consent when that incident formed the basis for the issuance of the restraining order.

First, the victim's application for the restraining order was not introduced into evidence and thus cannot be considered on appeal. MCR 7.210(A); *People v Warren*, 228 Mich App 336, 356; 578 NW2d 692 (1998), rev'd in part on other grounds 462 Mich 415; 615 NW2d 691 (2000). Second, the only evidence regarding the date of the incident came from the witnesses. The court resolved the conflict in favor of the victim, whose testimony was corroborated by a neighbor. Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). The fact that the trial court chose to believe the victim's testimony despite defense counsel's attempts to impeach her does not constitute error requiring reversal. *People v Snell*, 118 Mich App 750, 756; 325 NW2d 563 (1982). Third, even absent the incident, the evidence was sufficient to sustain the conviction because the testimony clearly indicated that defendant engaged in nonconsensual contact with the victim on several occasions after receiving notice of the restraining order.

To the extent defendant argues that the court's factual findings were incomplete as well as erroneous, the issue has not been preserved because defendant did not include it in the statement of questions presented on appeal. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). In any event, the record shows that the trial court was aware of the issues to be decided and correctly applied the law. It was not required to make specific findings as to each element of the crime. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ Brian K. Zahra