

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EARL WILLIAM BANCROFT,

Defendant-Appellant.

UNPUBLISHED

September 28, 2004

No. 247653

Oakland Circuit Court

LC No. 2002-187038-FH

Before: Borrello, P.J., and Murray and Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was found guilty but mentally ill of aggravated stalking. MCL 750.411i. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to one to twenty years in prison. Defendant appeals his conviction as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's first argument is that the evidence was insufficient to sustain the verdict.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

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). Harassment includes repeated or unconsented contact with the victim, which contact would cause a reasonable person to suffer emotional distress and actually causes the victim to suffer emotional distress. MCL 750.411i(1)(d). Unconsented contact includes sending mail to the victim. MCL 750.411i(1)(f)(vi). The second element is that the defendant has a prior conviction of stalking or aggravated stalking. MCL 750.411i(2)(d).

The evidence showed that, during the time in question, defendant repeatedly sent unwanted mail to Douglas Edgar for him or for his mother. After a previous conviction for stalking, he was directed not to have any contact with Edgar. Nevertheless, he sent Edgar approximately ten more unwanted mailings over the next three years. Although some of the correspondence was intended to go to Edgar's mother, defendant sent it directly to Edgar. Such evidence was sufficient to establish a willful course of conduct involving unconsented contact with the victim.

The evidence also showed a long-term history of unwanted contact between defendant and the Edgar family, which contact included threatening hate mail and vandalism of Edgar's mother's house. Since April 2000, the contact consisted of up to ten unwanted mailings. The mailings included one letter in which defendant interpreted the bible as saying that he and Edgar's mother should be stoned to death and another envelope stuffed with magazine clippings. The contents of the others were not disclosed, in part because some were thrown away. Edgar testified that he felt worried, angry, harassed, and terrorized by the mailings.

We conclude that there was sufficient evidence presented to the jury upon which to conclude that defendant repeatedly harassed Edgar and that the repeated contact would cause a reasonable person to suffer emotional distress. This holds true despite the contents of the communications, for given the history of the parties in this case, a reasonable person could feel harassed by continuing to receive any correspondence when the sender has been ordered not to do so, and was previously convicted for doing it in the past. In other words, the knowledge gained by merely reviewing the return address information on the envelope is sufficient under these circumstances for the jury to conclude that a reasonable person could feel harassed by receipt of the mail. Thus, there was sufficient evidence to satisfy the first element of aggravated stalking. MCL 750.411i(2). And, because the parties stipulated that defendant had a prior conviction for aggravated stalking, the prosecution submitted sufficient proof on the second element as well. MCL 750.411i(2)(d).

Defendant next contends that the court improperly admitted evidence supporting his prior stalking convictions, thereby violating his right against double jeopardy.

Initially, we disagree with defendant's assertion that he raised objections to the evidence, thereby preserving the issue for appeal. Defendant's objections were to Row being asked to comment on Edgar's appearance when he brought Row the latest mailings, not to evidence supporting the prior convictions, and to Edgar being asked to comment on the content of the November 18, 1997, mailing. That objection was based on relevancy grounds, not double jeopardy grounds. An appeal based on one ground is not preserved where the objection at trial was on a different ground. *People v Metzler*, 193 Mich App 541, 548; 484 NW2d 695 (1992). Because defendant failed to preserve this issue, review is precluded unless the defendant

demonstrates plain error that affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The United States and Michigan Constitutions both preclude double jeopardy. US Const, Am V; Const 1963, art 1, § 15. Double jeopardy issues are reviewed de novo on appeal. *People v Mackle*, 241 Mich App 583, 592; 617 NW2d 339 (2000). The constitutional prohibition against double jeopardy provides three separate protections: “(1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense.” *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004).

Only the second protection is at issue here. If the evidence supporting the prior convictions was being utilized to support the instant conviction, that would be improper. However, it appears that the evidence supporting the prior convictions was used to prove why Edgar felt worried, angry, harassed, and terrorized by the ten mailings forming the basis of this conviction. Because defendant was not convicted of stalking based on the same conduct giving rise to the previous convictions, there was no double jeopardy violation.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood