

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LAMONT WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 20, 2008

No. 275245

Washtenaw Circuit Court

LC No. 06-001481-FH

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of aggravated stalking, MCL 750.411i, and resisting or obstructing a police officer, MCL 750.81d(1), in connection with incidents in August 2006. He was sentenced to 15 months to five years' imprisonment for the aggravated stalking conviction and one to two years' imprisonment for the resisting or obstructing conviction. He appeals as of right. We affirm.

Tomekia Sommerville met defendant in 1999 and began a romantic relationship with him. They began cohabitating in December 2000. Thereafter, he physically and verbally abused her, prompting her to twice leave the residence and stay at a women's shelter. She ultimately secured her own residence and was surprised to find defendant standing on her front porch one morning. They reconciled, but defendant soon recommenced his violent behavior. During the next few years, he continually threatened her and appeared unannounced at her home, even after she changed residences and did not inform him of her new address. In 2003, she obtained a personal protection order, and defendant eventually was convicted of stalking and served a jail sentence. Thereafter, he continued his behavior and she often found him sitting outside her home late at night and appearing at public places where she happened to be. She frequently called the police, but defendant would run away before they arrived. He was eventually arrested in the case at bar while waiting outside her apartment as she returned home one evening.

Defendant first argues that the trial court denied him his constitutional rights to due process and a fair trial when it admitted other-acts evidence involving his history with Sommerville. We disagree. Although defendant asserts that he preserved this issue by challenging the introduction of the evidence before trial, the record fails to support his assertion.

Accordingly, because defendant did not timely object to the introduction of the evidence,¹ our review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To obtain relief, defendant must demonstrate a clear or obvious error that affected the outcome of the lower-court proceedings. *Id.* Moreover, reversal is warranted only if the error resulted in conviction despite defendant's actual innocence or if it seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of his innocence. *Id.* at 763-764.

MRE 404(b)(1) governs the admission of other-acts evidence. To be admissible, the evidence must be offered for a permissible purpose, i.e., one other than showing character or a propensity to commit the charged crime. *Knox, supra* at 509. Second, the evidence must be relevant under MRE 402. *Knox, supra* at 509. Third, unfair prejudice must not substantially outweigh the probative value of the evidence. *Id.*; MRE 403. Additionally, the trial court, if requested, may provide a limiting instruction to the jury under MRE 105. *Knox, supra* at 509.

Defendant contends that the admissible evidence should have been limited to what occurred on the night of his arrest in August 2006 and that the other-acts evidence was inadmissible. Defendant's argument lacks merit.

"Aggravated stalking consists of the crime of 'stalking,' MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2)." *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). "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).]

Further, MCL 750.411i(2) provides:

An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

(b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

¹ The record reveals that defendant objected to the challenged evidence, by moving for a mistrial, only after Sommerville testified regarding the evidence.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.

Therefore, in order to prove the aggravated stalking charge against defendant, the prosecutor was required to present evidence of defendant's particular conduct that constituted harassment and that led Sommerville to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Moreover, the prosecutor was required to prove at least one of the four aggravating factors set forth in MCL 750.411i(2). Thus, evidence concerning defendant's previous history with Sommerville, including physical and verbal abuse and his previous stalking conviction, was admissible and relevant for a proper, non-character-related purpose in this case.² It helped explain why defendant's actions in August 2006 caused Sommerville to feel terrorized, frightened, intimidated, threatened, harassed, or molested. It also established the statutory basis for *aggravated* stalking. It was vital to the prosecutor's case, and, therefore, we conclude that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. See MRE 403. Reversal is unwarranted.³

Defendant next argues that the admission of evidence that resulted in his previous stalking conviction violated his state and federal protections against double jeopardy. Defendant's argument is sparse and not well developed, but we will address it. However, because defendant did not timely raise this issue in the trial court, our review is under the plain error doctrine. *Carines, supra* at 763.

² MCL 750.411i(5) further supports our holding that evidence of defendant's previous history with Sommerville was admissible. This subsection provides:

In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

This language contemplates that a defendant's history with respect to a victim is admissible at trial.

³ In the context of this issue, defendant also refers to having been tried without receiving proper notice. This issue has been waived because it was not raised in the statement of questions presented for appeal, *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999), and because he does not develop a cogent argument, with accompanying legal authority, with respect to it, *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001).

“The United States and Michigan Constitutions protect a person from being twice placed in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15.” *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004) (footnotes omitted). An individual is protected against (1) a second prosecution for the same offense following either acquittal or conviction and (2) multiple punishments for the same offense. *People v Smith*, 478 Mich 292, 299; 733 NW2d 351 (2007). Defendant argues that the admission of evidence pertaining to his previous stalking conviction violated both these protections.

Defendant’s argument premised on the successive prosecution strand of the Double Jeopardy Clause fails. Defendant was not prosecuted in the instant case for conduct for which he was previously convicted. Defendant’s previous stalking conviction was based on conduct that occurred before September 2005, at which time he was released from jail after serving his sentence. As indicated in the felony information and as alluded to in the prosecutor’s closing statement, the conduct giving rise to the instant case occurred on August 21 and 28, 2006. Therefore, defendant was not prosecuted for the same activity or “same offense” that resulted in his previous conviction. As explained above, evidence of defendant’s previous conduct that resulted in his stalking conviction was admissible to help prove the instant aggravated stalking charge, but he was not prosecuted a second time for that conduct.

Defendant’s argument premised on the multiple punishment strand of the Double Jeopardy Clause is likewise misplaced. Defendant was not sentenced for the same offense for which he was previously convicted and sentenced. Rather, defendant’s sentence stemmed from conduct committed after he served his sentence for his previous stalking conviction. Defendant’s double jeopardy claim lacks merit.

Defendant next argues that the prosecutor presented insufficient evidence to support his conviction because there did not exist a valid personal protection order (PPO) against him at the time of his arrest. When determining whether sufficient evidence exists to support a conviction, we must view the evidence in the light most favorable to the prosecution and determine whether a rational fact-finder could conclude that the prosecutor proved every element of the offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). A reviewing court must draw all reasonable inferences and make credibility determinations in support of the jury verdict. *Id.* at 400.

The prosecutor presented sufficient evidence to support defendant’s conviction. As previously recognized, aggravating stalking is the offense of stalking plus an aggravating circumstance listed in MCL 750.411i(2). As the language of subsection (2) states, an individual may be convicted of aggravated stalking if “any” one of the four enumerated circumstances is shown. Thus, contrary to defendant’s argument, it was not necessary that he have a valid PPO against him as provided under subsection (2)(a), if one of the other subsections was established.

Here, the prosecutor’s evidence established subsection (2)(d). The prosecutor presented evidence that defendant had previously been convicted of stalking under MCL 750.411h. Therefore, there existed sufficient evidence to support defendant’s conviction.

Affirmed.

/s/ Donald S. Owens

/s/ Patrick M. Meter

/s/ Bill Schuette