

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 11, 2012

v

NORMAN PARISH, II,

Defendant-Appellant.

No. 304440
Delta Circuit Court
LC No. 11-021021-PP

Before: RONAYNE KRAUSE, P.J., AND BORRELLO, AND RIORDAN, JJ.

PER CURIAM.

Defendant, Norman Parish II, appeals as of right the trial court's order finding him in criminal contempt for violating a personal protection order (PPO). Defendant was sentenced to 20 days in jail. We affirm.

I. FACTUAL BACKGROUND

This case arises out of a violation of a PPO issued against Parish. Petitioner, Parish's ex-girlfriend, alleged that Parish was harassing her with texting, slashing her tires, and hacking into her Facebook account and posting pictures of her. The resulting PPO prohibited Parish from stalking petitioner, defined pursuant to MCL 750.411 to include behavior such as following petitioner, appearing within her sight, interfering with her at her place of education, or engaging in conduct that impairs her educational relationship or environment. When Parish sought clarification regarding whether he had to run away if he saw petitioner, the trial court specified that while Parish did not have to run, if he saw petitioner, he should walk away. Soon after the PPO was issued, Parish pleaded guilty to violating the PPO by attempting to contact petitioner through a third-party. Parish received a suspended sentence of 10 days in jail.

The violation at issue involves an incident at Bay de Noc Community College (Bay College), where petitioner was a student. Petitioner was in class when she noticed Parish's two-year-old son walk by her classroom. Approximately three minutes later, petitioner observed Parish walk by the classroom with his hood up. Parish walked by the classroom two more times, each incident occurring three minutes apart. Parish knew where petitioner's class was located because he had escorted her to class during their relationship. Parish testified that he was at Bay College because he was attempting to meet with an advisor and register for classes.

After class, petitioner walked toward the bookstore and saw Parish and his son sitting in a room in the administrative building. When petitioner then walked to student services, she saw Parish walk down the hall in the opposite direction from her. Petitioner then walked toward the math and science center and when she realized that Parish was walking to the same room, she requested that he turn around and leave. He ignored this request and went into the math and science center. Petitioner entered the math and science center and told Parish that since they were in the same room, he should leave. Parish again ignored petitioner's statements. Petitioner called the police and Parish remained in the room, sitting at a computer. Petitioner could not concentrate on her work because she was scared and nervous. Petitioner stepped out of the room to take a phone call and noticed that Parish eventually left the room.

The trial court found beyond a reasonable doubt that Parish violated the PPO. The trial court stated that Parish knew where petitioner would be, purposely appeared within her sight three times, and refused to leave when they were in the same room together. The trial court sentenced Parish to 20 days in jail. Parish now appeals.

II. JURY TRIAL

A. Standard of Review

Parish first argues that under Michigan law, he had a right to a jury trial. Parish failed to raise this issue in the lower court, and an issue is not preserved for appellate review if it is not raised before, addressed by, and decided by the lower court. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). An unpreserved claim is reviewed only for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999).

B. Analysis

Under Michigan law, a defendant does not have the right to a jury trial in a criminal contempt proceeding for violating a PPO. As this Court recognized in *Brandt v Brandt*, 250 Mich App 68, 72; 645 NW2d 327 (2002), “[c]ontempt proceedings are governed by MCR 3.708[,]” and “MCR 3.708(H)(1) specifically explains that a respondent in a contempt proceeding is not entitled to a jury trial.” This is consistent with the Michigan Supreme Court’s opinion in *Cross Co v United Auto, Aircraft & Agr Implement Workers of Am, Local 155*, 377 Mich 202, 211; 139 NW2d 694 (1966), which held that there is no constitutional right to a jury trial in criminal contempt proceedings.¹ Likewise, there is no right to a jury trial pursuant to the United States Constitution, as a penalty of 20 days in jail does not amount to a contempt proceeding for a serious offense. See *Bloom v State of Ill*, 391 US 194, 197, 210-211; 88 S Ct 1477; 20 L Ed 2d 522 (1968); see also *People v Antkoviak*, 242 Mich App 424, 431 n 3; 619 NW2d 18 (2000). Thus, there has been no plain error affecting Parish’s substantial rights.

¹ While Parish requests that we consider this issue as a conflict pursuant MCR 7.215(J)(2)-(3), that court rule applies to conflicting decisions of this Court, and does not grant us the authority to declare a conflict with a Michigan Supreme Court decision.

III. INSUFFICIENT EVIDENCE

A. Standard of Review

Parish argues that there was insufficient evidence to support the trial court's finding of contempt. We review de novo a challenge to the sufficiency of the evidence. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). "The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *Id.* (internal quotations and citation omitted); see also MCR 3.708(H)(3).

B. Analysis

The PPO specifically prohibited Parish from following petitioner, appearing within her sight, interfering with her at her place of education, or engaging in conduct that impairs her educational relationship or environment. In a clear violation of the PPO, Parish walked by petitioner's classroom where he knew her to be. Parish did this not once, but three times. Parish's stalking then escalated when he entered the math and science center despite petitioner approaching the same location. Then, despite petitioner's requests that Parish leave, Parish remained in the room, causing petitioner further anxiety and fear. This is sufficient evidence demonstrating that Parish violated the PPO by interfering with petitioner at her place of education. See MCL 600.2950(1)(g).

IV. CONCLUSION

Parish was not entitled to a jury trial during the contempt proceedings. Additionally, there was sufficient evidence to support a finding that Parish violated the terms of the PPO. We affirm.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan