

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 11, 2012

v

BRANDON MICHAEL IRELAND,
Defendant-Appellant.

No. 307155
Mecosta Circuit Court
LC No. 11-007163-FH

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Brandon Michael Ireland appeals as of right his jury trial conviction of aggravated stalking.¹ Ireland was sentenced to five years' probation. We affirm.

This case arises out of text and Facebook messages sent by Ireland to the victim. On appeal, Ireland argues that because aggravated stalking is a specific intent crime, the trial court committed reversible error when it instructed the jury that aggravated stalking is a general intent crime. We disagree. Appellate review of claims of instructional error² and questions of law regarding statutory interpretation³ is de novo.

“A defendant in a criminal trial is entitled to have a properly instructed jury consider the evidence against him[.]”⁴ As such, “[j]ury instructions must include all the elements of the offenses charged against the defendant and any material issues, defenses, and theories that are supported by the evidence.”⁵ “Even if the instructions are somewhat imperfect, reversal is not

¹ MCL 750.411i.

² *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002).

³ *People v Moore*, 470 Mich 56, 61; 679 NW2d 41 (2004).

⁴ *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007).

⁵ *Id.*

required if the instructions fairly presented the issues to be tried and were sufficient to protect the rights of the defendant.”⁶

“Aggravated stalking consists of the crime of ‘stalking,’^[7] and the presence of an aggravating circumstance^{[8],9} “‘Stalking’ means 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.”¹⁰ “‘Course of conduct’ means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.”¹¹ Conduct is harassment if it is “directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.”¹² Unconsented contact includes sending electronic communications to an individual “in disregard of that individual’s expressed desire that the contact be avoided or discontinued.”¹³

In the instant case, Ireland does not challenge the presence of an aggravating circumstance. Rather, he contends that it was error that the jury was not instructed that stalking requires that the prosecution prove that he intended to engage in behavior that he knew would cause the victim emotional distress. Our Supreme Court in *Nastal v Henderson & Assoc Investigations, Inc* analyzed the criminal stalking statute,¹⁴ including the statutory definitions of “harassment,” “unconsented contact” and “course of conduct” and concluded that to demonstrate stalking (1) “there must be two or more acts of unconsented contact[,]” (2) “that actually cause emotional distress to the victim” and (3) “would also cause a reasonable person such distress.”¹⁵ Thus, contrary to Ireland’s assertion, to prove stalking, it is not required that the prosecution establish that Ireland knew that his behavior would cause the victim emotional distress. Because the record demonstrates that the jury was properly instructed regarding the elements of aggravated stalking, relief is not warranted.

⁶ *People v Fennell*, 260 Mich App 261, 265; 677 NW2d 66 (2004).

⁷ MCL 750.411h(1)(d).

⁸ MCL 750.411i(2).

⁹ *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002).

¹⁰ MCL 750.411i(1)(e); MCL 750.411h(1)(d).

¹¹ MCL 750.411i(1)(a); MCL 750.411h(1)(a).

¹² MCL 750.411i(1)(d); MCL 750.411h(1)(c).

¹³ MCL 750.411i(1)(f); MCL 750.411h(1)(e).

¹⁴ MCL 750.411h.

¹⁵ *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 721-723; 691 NW2d 1 (2005) (footnote omitted).

Ireland next argues that there was insufficient evidence to convict him of aggravated stalking. We disagree. Sufficiency of the evidence claims are reviewed on appeal de novo.¹⁶ The evidence is viewed “in a light most favorable to the prosecution [to] determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.”¹⁷

Ireland does not dispute that there were three unconsented contacts; two text messages sent to the victim and one Facebook message sent to the victim’s roommate after Ireland was told not to contact the victim. Because Ireland was specifically told that the victim wanted no further contact, the messages constituted unconsented contact. Additionally, the victim testified to feeling emotional distress after Ireland sent the messages, and Ireland does not dispute that there were aggravating circumstances. Ireland contends, however, that his text messages to the victim would not cause a reasonable person to feel emotional distress.

The victim testified to first meeting Ireland when he appeared to be “in a complete rage” and was yelling at his roommate. Thereafter, in January 2011, Ireland sent the victim a Facebook message that called her an “integral cog in the plots” against him; accused her of being promiscuous and “perpetual[ly] cheating” on her boyfriend; and indicated that she was “actively pursu[ing] STDs” to give to her boyfriend. The message went on explain that Ireland once saw the victim as a symbol of perfection and believed that she was “the most beautiful girl” that he had ever seen, but concluded by saying that the sight of her now gave him “an unmistakable urge to vomit.” Ireland also referenced the victim on Facebook in a post that stated that he had a “strong desire to sleep with a girl [he] would otherwise despise just to see what all the fuss is about.” And, another Facebook post by Ireland indicated that the victim allegedly received money for sex and engaged in “hundreds of incidents of infidelity,” and made other sexually related comments regarding the victim. Ireland also text messaged the victim and stated, “Before you hear through the grapevine or see my post on Facebook, I wanted to tell you I plan on having sex with you in the near future.” After receiving Ireland’s text message about his desire to have intercourse with her, which the victim testified would have to be without her consent, the victim went to the police to make a complaint as she was scared and unsure if Ireland was going to come after her.

While the two text messages Ireland subsequently sent to the victim were seemingly innocuous,¹⁸ both text messages occurred after the police advised Ireland not to contact the victim. In fact, the first text message was sent no more than ten minutes after the police told him to cease contact. Accordingly, we find that within the context of Ireland’s contact with the

¹⁶ *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

¹⁷ *Id.* (footnote and quotations omitted).

¹⁸ The first text message indicated that Ireland “didn’t mean to offend” the victim and the second informed the victim about a vitamin sale.

victim before the two text messages were sent, a rational jury could find that the elements of the crime were proved beyond a reasonable doubt.¹⁹

Affirmed.

/s/ Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan

¹⁹ *Herndon*, 246 Mich App at 415. Based on the resolution of the first issue, Ireland's assertion that there was insufficient evidence to convict him of aggravated stalking because the prosecution failed to prove that he intended to cause the victim emotional distress must fail.