STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0530

State of Minnesota,
Respondent,

vs.

Gary Lloyd Boettcher,
Appellant.

Filed December 24, 2012
Affirmed
Stauber, Judge

Steele County District Court
File No. 74CR092905

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James S. Cole, Assistant Steele County Attorney, Owatonna, Minnesota (for respondent)

Gary A. Gittus, Gittus Law Offices, Rochester, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant challenges the sufficiency of the evidence supporting his conviction of gross-misdemeanor stalking in violation of Minn. Stat. § 609.742, subd. 2(a)(2) (2008), arguing that the state did not prove beyond a reasonable doubt that he knew or should have known that his conduct would cause the complainant to feel frightened, threatened, or intimidated. We affirm.

FACTS

On July 4, 2009, a man later identified as appellant Gary Lloyd Boettcher entered a convenience store in Owatonna and asked D.S., an employee at the store, if she wanted to go with him to watch horse races in northern Minnesota. D.S. refused, explaining that she had a boyfriend. Thereafter, appellant became a regular customer at the convenience store, always sitting in a section of the eating area where he could see into the kitchen where D.S. worked and stare at her.

Five months later, D.S. walked from the convenience store to her car and noticed appellant following her. After seeing appellant, D.S. hurried to enter her vehicle and locked her car doors. Appellant reached the driver's side door and pulled on the handle, attempting to open the locked door. Appellant then walked away from the vehicle, but soon thereafter parked his vehicle behind D.S.'s vehicle, effectively blocking her, and stared at her from his vehicle. The encounter left D.S. frantic, hysterical, and rattled, and she contacted the police.

Appellant was charged with gross-misdemeanor harassment/stalking in violation of Minn. Stat. § 609.749, subd. 2(a)(2). The state later amended the complaint, adding one count of disorderly conduct in violation of Minn. Stat. § 609.72, subd, 1(3) (2008). Following a jury trial, appellant was convicted on both counts and received a 180-day sentence, stayed for two years.[1] This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, an appellate court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). A jury's verdict will not be disturbed if, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, the jury could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

[1] Appellant does not present a specific challenge to the conviction for disorderly conduct and has therefore waived any argument regarding the sufficiency of evidence supporting that conviction. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

A person is guilty of gross-misdemeanor harassment/stalking if he harasses another by stalking, following, monitoring, or pursuing another. Minn. Stat. § 609.749, subd. 2(a)(2).[2] The term "harass" is statutorily defined and means "to engage in intentional conduct which: (1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and (2) causes this reaction on the part of the victim." *Id.*, subd. 1 (2008). In a prosecution for harassment/stalking, the state need not prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated. *Id.*, subd. 1a (2008). Rather, the state need only prove that the actor knew or had reason to know that his conduct would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated. *Id.*, subds. 1, 1a.

In *State v. Stockwell*, we held that an actor knows or has reason to know that his or her conduct would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated when the actor follows or pursues another by car in an aggressive and dangerous manner. 770 N.W.2d 533, 542 (Minn. App. 2009). In that case, the trial testimony revealed that the appellant drove her vehicle "dangerously close [to the victim] for several blocks," refused to pass the victim when given the opportunity to do so, and then followed the victim to a parking lot where appellant accosted the victim. *Id.* We

[2] The legislature amended the harassment/stalking statute in 2010. 2010 Minn. Laws ch. 299, § 8, at 739. It is now a stalking statute only: the active word is "stalk" instead of "harass." *See* Minn. Stat. § 609.749 (2010). The new definition became effective on August 1, 2010, and applies to crimes committed on or after that date. 2010 Minn. Laws ch. 299, § 8, at 744. While the crime is substantively the same, the old statute and definition apply in the present case.

held that, "at minimum, appellant followed or pursued [the victim] by car in an aggressive and dangerous manner," which supported the jury's verdict that appellant "knew or had reason to know that her driving conduct would cause [the victim] to feel frightened, threatened, oppressed, persecuted, or intimidated." *Id.*

Here, when the testimony and evidence is construed in the light most favorable to the jury's verdict, the record establishes the following: (1) appellant would regularly go to the convenience store where D.S. worked, sit in the same booth, and stare at her; (2) D.S. was "weirded out" by appellant's behavior; (3) appellant would wait until D.S. was serving and then sneak in line so that D.S. would serve him; (4) on July 4, 2009, appellant asked D.S. to watch horse races with him, which she refused and told appellant that she had a boyfriend; (5) on December 5, D.S. was walking to her car from the restaurant and noticed appellant following her without saying anything; (6) after reaching her car, D.S. locked the doors and called her boyfriend; (7) appellant approached the driver's side door and pulled on the door handle, found it locked, and then walked away, all without saying a word; (8) minutes later, appellant parked his vehicle behind D.S.'s vehicle, effectively blocking her from leaving; (9) appellant remained in his vehicle for a minute, staring at D.S., and then drove away; and (10) the encounter left D.S. frantic, hysterical, and rattled.

Based on this testimony, "at a minimum," appellant followed D.S. to her vehicle, attempted to gain access to the vehicle without her permission, and he then positioned his vehicle in a way that prevented her from driving away. The evidence therefore sufficiently supports the jury's verdict that appellant knew or had reason to know that his

conduct would cause D.S. to feel "frightened, threatened, oppressed, persecuted, or intimidated." *See Stockwell*, 770 N.W.2d at 542.

Affirmed.