REL: September 3, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-20-0258

Meri Church

v.

City of Huntsville

Appeal from Huntsville Municipal Court
(MU-11092188)

KELLUM, Judge.

After a bench trial, Meri Church was found guilty in the Huntsville Municipal Court of stalking in the second degree, a violation of Huntsville

municipal ordinance No. 17-1, adopting § 13A-6-90.1, Ala. Code 1975, as an offense against the City of Huntsville.[1] The municipal court imposed a $100 fine and ordered Church to pay court costs. Church appealed directly to this Court pursuant to Rule 30.2, Ala. R. Crim. P.

I.

Church first contends on appeal, as she did in her motion for a judgment of acquittal, that the evidence was insufficient to sustain her conviction for stalking in the second degree.

The evidence adduced at trial indicated the following. In March 2019, James Henderson obtained a six-month special-event permit to engage in "[p]ro-life [c]ounseling and [p]rayer" outside the Alabama Women's Center ("AWC") on Sparkman Drive in Huntsville; he obtained two subsequent six-month permits for the same purpose. (C. 75.) The building next to AWC housed three businesses, including Holloway &

[1]A copy of the ordinance is not contained in the record on appeal. However, the complaint cites the ordinance, and at trial the municipal court noted that the ordinance "adopt[ed] the Code of Alabama 1975 Section 13A-6-90.1 which defines the offense of stalking in the second degree." (R. 67.)

Associates ("H&A"), a real-estate and property-management firm owned and operated by Andrea Karnice Holloway. Holloway identified Church as a participant in the protests held outside AWC. Holloway testified that on any given day, there would be between 3 and 12 protestors and that there were at least 5 protestors who, when they participated in the protests, would stand on the sidewalk in front of her business instead of in front of AWC. According to Holloway, Church was one of those people. Holloway said that she had seen Church in front of her business between six and eight times.

Holloway testified that Church repeatedly harassed her, her employees, and her customers and "anybody in [her] parking lot," saying that H&A was affiliated with AWC, even though it was not. (R. 151.) Holloway also testified that Church had said more than once that "she was trying to damage any business or stop people from, you know dealing with Holloway & Associates." (R. 151.) Holloway said that, while in front of her business, Church would "[y]ell[] and scream[] inappropriate stuff, accus[e] us of blood money and we're in cahoots with the baby killers, you know, and don't do business with Holloway & Associates and hold[] up the

pictures of bloody babies and fac[e] my building." (R. 149.) Holloway testified that, when protesting, Church would always face her building, not the street or AWC. Every time she saw Church in front of H&A, Holloway asked Church to move away, but Church refused, telling Holloway that Church was on the sidewalk and could "be wherever she wants to be, she can do whatever she wants to do." (R. 151.) Holloway called the police several times, beginning in the summer of 2019, regarding the protestors who would stand in front of her business, including Church. Holloway said that Church's actions harmed her business. She denied trying to run Church over with her automobile and denied any knowledge of Church having made such an allegation.

Robert Tuck, who had known Holloway for some time and had performed plumbing work for her, testified that, in May 2020, he saw Church multiple times standing on the sidewalk talking to customers who were entering H&A's office. Church was holding a sign and was talking about "killing babies." (R. 243.) He said that the protestors could be heard inside H&A's office, and he agreed that the situation created "a very uncomfortable work environment." (R. 245-46.)

Monique Conley, one of Holloway's employees, testified that she had seen Church in front of H&A "frequently" (R. 251) and that she had contacted the police at least three times because Church was "screaming and yelling" and saying that "Holloway & Associates don't care about black babies." (R. 267.) She testified that the protestors who would stand in front of H&A were loud and that they could be heard inside H&A's office. According to Conley, she never heard the other protestors who were in front of AWC yelling or screaming. Conley also testified that Church's actions were disruptive to H&A's business, and she agreed that the entire situation had created "a pretty stressful work environment." (R. 265.)

Josephine Peterson, a volunteer at AWC, testified that she knew Church as one of the protestors in front of the clinic and that she had seen Church on the sidewalk in front of H&A at least four to six times and on H&A's property at least twice. Peterson said that Church would yell at Holloway, Holloway's staff, and Holloway's customers. Specifically, Peterson said, she had heard Church yelling that Holloway supported "baby killers" and "care[d] about money more than [she] care[d] about

babies being killed," telling people not to do business with H&A, and telling Holloway that her "life is going to be worse, ten times worse." (R. 197-98.) Peterson also testified that, on May 1, 2020, she saw a police officer in H&A's parking lot with Church. Church walked away from the officer and "cut across the clinic property." (R. 193.) According to Peterson, AWC takes it "very seriously" when a protestor comes on the clinic's property, so she spoke with the police officer and asked him to warn Church about trespassing on AWC property. (R. 193.)

The City presented evidence indicating that the Huntsville Police Department had received several calls from H&A regarding protestors harassing the employees and customers of H&A. The City also introduced into evidence video recordings of some of Church's actions.[2] In one of those videos, Church agreed with another protestor as the protestor explained that it was important to target the businesses around AWC because "if life gets hard for the businesses around [AWC] that puts more pressure on [AWC]." (City's Exhibit 5.)

[2]We have viewed those videos.

Church called six witnesses in her defense and also testified on her own behalf. Robert Alan Mog and Marliese Huel testified that they had been protesting AWC for years. They both testified about an incident that occurred on April 2, 2020. According to Mog and Huel, Holloway drove her Jeep sport-utility vehicle onto the sidewalk in front of H&A and Church had to jump out of the way to avoid being hit. Mog and Huel also testified that it was approximately a year before the trial, or in the fall of 2019, when Church began coming to the protests held during the week when AWC and surrounding businesses were open; Mog said that, before that, Church had attended only the Saturday vigils. According to Mog, it was around that same time, the fall of 2019, that "things sort of ramped up a little bit" during the protests. (R. 293.) Although it was not unusual for the police to be called during a protest, either by AWC or the surrounding businesses, the number of calls to the police had increased over the previous year. Both Mog and Huel described Church as peaceful and quiet.

James Henderson, the holder of the special-event permit, also testified that Church was peaceful and quiet. He said that the intent of

the permit he obtained was to counsel the women going to the clinic for abortions and that he would not consider harming a business unaffiliated with AWC consistent with the purpose of "prayer and counseling." (R. 349.) Orange Jay Holloway, Holloway's husband, testified that he had advised his wife not to file a complaint against the protestors. Daniel Rusk and his wife Mary Baggett, who were frequent protestors of AWC, both testified that on March 20, 2020, they saw Holloway drive her vehicle across the H&A parking lot and stop abruptly just before entering the grass near the sidewalk where Church was standing.

Church testified that she began participating in the protests in front of AWC in December 2019 with the purpose of "draw[ing] attention" to the fact that there was an abortion clinic in Huntsville. (R. 368.) She said that she attended protests twice in December 2019, three times in January 2020, twice in February 2020, once in March 2020, four times in April 2020, four times in May 2020, and twice in June 2020, including the day she was arrested, June 19, 2020. On March 20, 2020, Church said, she was standing on the sidewalk in front of H&A holding a sign toward the street so the vehicles driving by could see it when Holloway got into

her Jeep, "gunned the engine, ... bolted across the parking lot, and then ... stopped abruptly" near where Church was standing. (R. 374.) Holloway then began sounding her horn continually. Church said that she had "no idea" why Holloway did that and that, at the time, she did not know who Holloway was and did not know anything about Holloway's business. (R. 375.) According to Church, "a young girl" came out of H&A and got in the passenger seat of the Jeep and then someone from AWC came over to the vehicle and the three were listening to music, laughing, and talking. (R. 376-77.) The police arrived a short time later and spoke with Holloway, during which time, Church said, Holloway continued sounding her horn.

Church testified that on April 2, 2020, she was again on the sidewalk in front of H&A facing the street and holding a sign when Holloway drove her Jeep onto the sidewalk while sounding her horn. Church said that she jumped out of the way because it did not look like Holloway was going to slow down. Holloway, however, "slammed on her brakes" and stopped approximately five feet from Church, then backed up, and drove into the

H&A parking lot. (R. 381-82.) As she did so, Church said, Holloway rolled down the driver's side window and laughed at Church.

Church denied that she ever targeted H&A when she was protesting, stating that she always stood on the sidewalk and always faced the street "to get attention from the traffic." (R. 376.) She denied that Holloway had ever asked her to move or to stop what she was doing and denied initiating any communication with Holloway, Holloway's employees, or Holloway's customers. Church said, however, that, one time, "a lady" other than Holloway had come out of H&A and "started yelling" at her and telling her to go to another part of the sidewalk. (R. 380.) According to Church, she informed the woman that it was a public sidewalk. Church said that, each time she protested, she walked up and down the public sidewalk facing the street, which she thought she was allowed to do. She also said that she would never call people names or "be nasty" to people she did not know. (R. 388.) Church presented evidence indicating that, the morning of May 27, 2020, only a few hours before Holloway filed a complaint against Church alleging that Church was stalking Holloway,

Church had filed a complaint against Holloway for trying to run her over with a vehicle.

> "'"In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution."' Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). '"The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt."' Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). '"When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision."' Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). 'The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury.' Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978)."

Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003).

Section 13A-6-90.1(a), Ala. Code 1975, adopted by Huntsville municipal ordinance No. 17-1, provides:

> "A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree."

To meet its burden, the City was required to prove: (1) that Church, with an improper purpose, intentionally and repeatedly either followed, harassed, telephoned, or initiated communication with Holloway, a member of Holloway's family, or an acquaintance of Holloway; (2) that, in doing so, Church's actions either caused material harm to the mental or emotional health one of the above-named persons or caused the person to reasonably fear that his or her employment, business, or career was threatened; and (3) that Church had previously been informed to cease her conduct.

Church makes several specific arguments regarding the sufficiency of the City's evidence, all of which are based on a view of the evidence

most favorable to her. However, in reviewing Church's arguments, we view the evidence, as we must, in a light most favorable to the City.

First, Church argues that the City failed to prove that she acted with an improper purpose because, she says, she was engaging in her First Amendment right to free speech in accordance with the special-event permit and her only purpose "was to share her pro-life message." (Church's brief, p. 12.) According to Church, although "[t]here were verbal exchanges between some of the pro-life advocates ... and Holloway, ... Church's mere presence does not implicate participation in these exchanges" and "guilt by association ... does not constitute an 'improper purpose.' " (Church's brief, pp. 12-13.) However, Holloway testified that Church told people entering and leaving H&A that H&A was affiliated with AWC when it was not and that she had heard Church say more than once that Church "was trying to damage any business or stop people from, you know dealing with Holloway & Associates." (R. 151.) A video showed Church agreeing with a fellow protestor that targeting the businesses around AWC would put pressure on AWC. In addition, Peterson testified that she had heard Church telling people not to do business with H&A

and telling Holloway that her "life is going to be worse, ten times worse." (R. 197-98.) Viewed in a light most favorable to the City, this evidence established that Church was not merely attempting to share her pro-life message, but was attempting to damage Holloway's business because it was housed in the building next to AWC. Attempting to damage someone's business is clearly an improper purpose.

Second, Church argues that the City failed to prove that she followed, harassed, or initiated communication with Holloway or with anyone associated with Holloway. Following, harassing, or initiating communication are alternative methods of proving stalking in the second degree and, although Church makes arguments about all three alternatives, because the City was required to prove only one, we need address only one of Church's arguments. Church argues that the City failed to prove that she initiated communication with Holloway because, she says, she testified on her own behalf "that she never initiated any contact with Holloway" and "did not even know who Holloway was at the time" and that the only interaction she had with Holloway was when Holloway "used her Jeep to assault" Church. (Church's brief, p. 20.)

However, Holloway testified that Church repeatedly stood on the sidewalk in front of H&A; that Church would face H&A, not the street or AWC; that Church would hold up a sign depicting bloody babies; and that Church would yell at Holloway, Holloway's employees, and Holloway's customers as they entered and exited H&A. This evidence was sufficient to establish that Holloway initiated communication with Holloway or with an acquaintance of Holloway.

Finally, Church argues that the City failed to prove that she was asked to cease her conduct because, she says, "Holloway never asked [her] to cease any purported harassing conduct." (Church's brief, p. 21.) However, Holloway testified that she had seen Church standing in front of H&A between six and eight times and that each time she asked Church to move away. In addition, Church admitted during her own testimony that someone from H&A had asked her to leave the area in front of H&A and she had refused. This evidence was sufficient to establish that Church had previously been asked to cease her conduct.

Therefore, the municipal court properly denied Church's motion for a judgment of acquittal.

II.

Church next contends that the municipal court erred in denying her motion to dismiss the complaint against her.

Before trial, Church filed a motion to dismiss on the grounds that the complaint was not made under oath and that it had not been signed by a judge or magistrate. The municipal court denied the motion on the record, stating that the complaint had been made under oath and that it had been signed by a magistrate. Church then argued that the copy of the complaint she had received had not been made under oath or signed by a judge or magistrate and that it was not dated. The municipal court noted that often a defendant will receive an unsworn or unsigned copy of a document and it offered to provide Church a copy of the sworn and signed complaint that was in the court file and to "entertain a motion to continue and reschedule the case so that she has a copy of [the sworn and signed complaint] before proceeding." (R. 13.) Church clarified with the court that her copy of the complaint charged the same offense as the complaint in the court file -- second-degree stalking -- but did not request a copy of the sworn and signed complaint or move for a continuance.

On appeal, Church argues that the copy of the complaint provided to her "did not specify the charges against her" and that, therefore, the municipal court should have granted her motion to dismiss. (Church's brief, p. 23.) However, Church did not raise this specific argument in the municipal court, in her motion to dismiss, or otherwise. "Review on appeal is limited to review of questions properly and timely raised at trial." Newsome v. State, 570 So. 2d 703, 716 (Ala. Crim. App. 1989). Moreover, "[t]he statement of specific grounds of objection waives all grounds not specified, and the trial court will not be put in error on grounds not assigned at trial." Ex parte Frith, 526 So. 2d 880, 882 (Ala. 1987). "A defendant is bound by the grounds of objection stated at trial and may not expand those grounds on appeal." Griffin v. State, 591 So. 2d 547, 550 (Ala. Crim. App. 1991). Because Church did not make this argument below, it was not properly preserved for review and will not be considered.

III.

Finally, Church argues that § 13A-6-90.1 is unconstitutional because, she says, it infringes on her constitutional right to free speech.

However, Church did not raise this issue in the municipal court. "Even constitutional claims may be waived on appeal if not specifically presented to the trial court." Brown v. State, 705 So. 2d 871, 875 (Ala. Crim. App. 1997). Therefore, this issue was not properly preserved for review and will not be considered.

Based on the foregoing, the judgment of the municipal court is affirmed.

AFFIRMED.

Windom, P.J., and Cole, J., concur. McCool, J., concurs specially, with opinion, which Minor, J., joins.

McCOOL, Judge, concurring specially.

I agree that the judgment of the municipal court should be affirmed, and I concur fully with the main opinion. Concerning Meri Church's sufficiency-of-the-evidence claim, as noted by the main opinion, " ' "[t]he role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the [trier of fact]." Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978).' " ___ So. 3d at ___, quoting Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003). In the present case, the City presented sufficient evidence from which the trier of fact could decide that Church had committed the offense of second-degree stalking. Further, Church's other two arguments on appeal – that her copy of the complaint "did not specify the charges against her" and that § 13A-6-90.1 infringes on her constitutional right to free speech – are not preserved for appellate review.

I write separately because the facts of this case involve "pro-life counseling and prayer" outside a clinic that provides abortions, a highly emotional and controversial issue. I want to point out that the present

case does not in any way involve any of the current legal precedent concerning abortion. If it did, I would agree with Alabama Supreme Court Justice Mitchell's special writing in Magers v. Alabama Women's Center Reproductive Alternatives, LLC, [Ms. 1190010, Oct. 30, 2020] ___ So. 3d ___ (Ala. 2020), in which Justice Mitchell points out the constitutional deficiencies of Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992), and urges the United States Supreme Court to overrule those "highly regrettable decisions" at the earliest opportunity. Also, I want to point out that the present case does not involve the sacred right to free speech that is enshrined in the First Amendment to the United States Constitution because no argument concerning the constitutional right to free speech is properly before this Court. Instead, this case simply involves our rather mundane legal precedent concerning sufficiency of the evidence and preservation of arguments for appellate review. Concerning both of those issues, the main opinion's accurate analysis leads to the correct conclusion that the judgment of the municipal court should be affirmed. Thus, I concur.

Minor, J., concurs.