

RENDERED: July 10, 1998; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 97-CA-0455-MR

ISRAEL BOYD

APPELLANT

v.

APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE DAVID CAUDILL, JUDGE  
CRIMINAL ACTION NO. 96-CR-00072

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: BUCKINGHAM, EMBERTON and GUIDUGLI, Judges.

GUIDUGLI, JUDGE. Israel Boyd (Boyd) appeals from the judgment entered against him by the Floyd Circuit Court after a jury verdict found him guilty of stalking in the first degree and imposed a sentence of one year in the penitentiary. We affirm.

Appellant married Belinda Boyd (Belinda) in February, 1991. A son, Justin, was born to the marriage in September, 1992. In June, 1995, Belinda, then 18 years of age, filed a domestic violence petition against Boyd alleging he "beat me up and threatened to kill me and shoved me down on the couch." An emergency protective order (EPO) was issued directing Boyd to

remain at least 500 feet away from Belinda. On July 7, 1995, a domestic violence order (DVO) was entered continuing the terms of the EPO for one year. The couple separated several months later in October, 1995.

About six months later, on April 10, 1996, Belinda filed an affidavit alleging that Boyd "has been calling and threatening [sic] me face to face." A domestic violence show cause order was entered that day against Boyd. On April 18, 1996, a hearing was held and Boyd was found guilty of violation of the DVO and sentenced to ten (10) days in jail.

Boyd apparently violated the DVO again within the Floyd County Courthouse and in the presence of a Floyd County Deputy Sheriff. Boyd was arrested for contempt of court - violation of EPO. Boyd was arraigned the next day, April 19, 1996, pled guilty, and was sentenced to another ten (10) days in jail to run concurrently with the ten days he had been sentenced the previous day.

On April 26, 1996,<sup>1</sup> between 8:00 a.m. and 8:30 a.m., Belinda was driving to the Community Action office to pick up a medical card. She noticed Boyd was following her and continued driving. When she arrived at the Community Action office she was unable to summon help because her car horn was not working. Before Belinda could get out of her car, Boyd was standing at the car door. Boyd grabbed Belinda by her hair and yanked her from

---

<sup>1</sup> The record does not reflect why Boyd was out of jail seven days after receiving two ten day jail sentences on April 18th and 19th, 1996.

the car. He threatened to kill her if she had him put in jail again.

The Floyd County Grand Jury returned a two-count indictment against Boyd charging him with first-degree stalking and terroristic threatening. At trial, the jury found Boyd guilty of both first-degree stalking and terroristic threatening. The jury recommended a sentence of one year for first-degree stalking and nine months and a \$500 fine for terroristic threatening.

Boyd was sentenced to the recommended one year in the penitentiary for first-degree stalking. Upon motion of Boyd's counsel, the trial court amended the judgment and dismissed the terroristic threatening as a lesser included offense of stalking. Boyd appealed, alleging the trial court erred in failing to quash the indictment and that there was insufficient evidence to sustain his conviction for stalking.

A person is guilty of stalking in the first degree when he or she intentionally stalks another and makes explicit or implicit threats intending to place the victim in reasonable fear of serious bodily injury or death, and the defendant has previously been served with a protective order protecting the same victim. KRS 508.140.

In this appeal, Boyd complains that the indictment states the violation occurred on April 26, 1996, but lists no other occurrences of "stalking." Boyd argues that KRS 508.130 requires a "course of conduct" consisting of two (2) or more acts

directed at a specific person. Accordingly, he argues, the trial court erred by overruling his motion to quash the indictment for failure to state an offense under KRS 508.140. We disagree. The Kentucky Rules of Criminal Procedure adopted the principle of notice pleading which applies to indictments:

An indictment is sufficient if it fairly informs the accused of the nature of the charged crime, without detailing the formerly "essential" factual elements, Finch v. Commonwealth, Ky., 419 S.W.2d 146, 147 (1967), and "if it informs the accused of the specific offense with which he is charged and does not mislead him." Wyllie v. Commonwealth, Ky., 556 S.W.2d 1, 2 (1977).

Thomas v. Commonwealth, Ky., 931 S.W.2d 446, 449 (1996).

We hold the indictment was sufficient as a matter of law to inform Boyd of the offenses with which he was charged and that he could not have been misled thereby. The trial court did not err in refusing to quash the indictment.

Boyd's sufficiency of the evidence argument must also fail. The record clearly shows Boyd committed at least two "acts" in violation of the July 7, 1995, DVO ordering him to remain at least 500 feet away from Belinda. The July 7, 1995, order was effective until July 7, 1996. Boyd had notice of the DVO. Boyd was found guilty of violating the DVO the first time on April 18, 1996. This violation was based upon the April 10, 1996, affidavit of Belinda and the hearing held on the 18th. On April 19, 1996, Boyd plead guilty to violating the DVO a second time, that violation occurring on April 18, 1996, in or about the courthouse as he appeared for the previous violation. Boyd was

present in court for both of these convictions and they were a matter of public record.

The present indictment for his conduct on April 26, 1996, was the third violation of the DVO in less than three weeks. Pursuant to the statute, the Commonwealth's Attorney presented the case to the grand jury which returned the felony indictment for first-degree stalking.

At trial, Boyd denied the incident happened. He attempted to establish the alibi that he was working at a woman's home at the time of the alleged events. This woman's testimony at trial was that Boyd had arrived just before 8:00 a.m. and began working, but that she had left her home to drive to the post office. Boyd could not establish an alibi during the relevant time period on April 26, 1996. The jury believed Belinda and the verdict was supported by substantial evidence.

The verdict and judgment of the Floyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paula Fitzgerald  
Louisville, KY

BRIEF FOR APPELLEE:

A. B. Chandler, III  
Attorney General

Carol C. Ullerich  
Assistant Attorney General  
Frankfort, KY