

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRIAN SCOTT NOWICKI,

Defendant-Appellee.

UNPUBLISHED

December 27, 2005

No. 257528

Allegan Circuit Court

LC No. 04-013647-FH

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order quashing defendant's bindover for two counts of aggravated stalking, MCL 750.411i. We affirm in part and reverse in part.

Defendant's bindover arose from a statement he made to his probation officer that he was tempted to drive by the residence of a woman who worked at his stepson's school, the report of a suspicious car, and footprints found around two residences, including the residence of a woman who worked at the stepson's school.

Plaintiff first argues that the circuit court erred in holding that the aggravated stalking statute requires that "the victim must be aware of the [d]efendant." However, plaintiff fails to develop that argument, and an appellant may not announce his position and leave it to this Court to discover and rationalize the basis for the claim. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Because plaintiff has failed to argue the merits of this allegation of error, he has not properly preserved this issue for review, *People v Jones (On Rehearing)*, 201 Mich App 449, 457; 506 NW2d 542 (1993), and is therefore abandoned. *Harris, supra* at 50. Further, plaintiff's undeveloped argument seems at odds with the statute's requirement that the stalking "actually cause[d]" the victim emotional distress. MCL 750.411i(1)(d).

Plaintiff next argues that the circuit court erred in holding that the district court abused its discretion in binding over defendant. We agree that bindover was unwarranted for the charge relating to alleged victim Carolyn Henry. However, bindover on the charge relating to alleged victim Kurt Barager was not an abuse of discretion. We review de novo a circuit court's decision to quash a bindover to determine if the district court abused its discretion in binding over a defendant. *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). An abuse of discretion occurs when an unbiased person reviewing the same facts before the court would conclude that there was no justification for the court's ruling. *Id.* at 714.

“A district court must bind a defendant over for trial when the prosecutor presents competent evidence constituting probable cause to believe that (1) a felony was committed and (2) the defendant committed that felony.” *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). “Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense charged.” *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). The prosecution must present some evidence from which each element of the crime may be inferred. *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996).

MCL 750.411i(1)(e) defines stalking as “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.”

Plaintiff presented competent evidence which would warrant a cautious person’s belief that defendant engaged in a willful course of conduct. A course of conduct is defined as “a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.” MCL 750.411i(1)(a). A resident of the subdivision where the alleged victims lived testified that he observed defendant’s car parked in the same spot seven or eight times during a two month period, and defendant admitted that he stopped in the subdivision four or five times on his way to work. Defendant also admitted that he went to the subdivision to walk up and down the street in hopes of seeing a woman undress or flash him. While defendant denies going to any of the residences, a reasonable person could infer that defendant made the footprints found around the alleged victims’ residences, where defendant had previously been convicted of stalking for window peeping, had told his probation officer that he had identified a woman of interest at his stepson’s school and one of the alleged victims was a substitute teacher at his stepson’s school, and had stated that his purpose in visiting the subdivision was to observe a woman undress or flash him. This evidence demonstrates a course of conduct involving two or more noncontinuous acts, walking up and down a street on at least four or five occasions and looking into windows, evidencing a continuity of purpose, to see a woman undress or flash him.

Plaintiff also presented competent evidence which would warrant a cautious person’s belief that defendant’s course of conduct involved repeated or continuing harassment of Barager but not of Henry. Harassment is defined as “conduct 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.” MCL 750.411i(1)(d).

Barager testified that he had seen a set of footprints around his house with some frequency during February and March 2004. Because Barager noticed footprints more than once, a cautious person could believe that defendant’s alleged course of conduct repeatedly harassed Barager. In contrast, Henry testified that she only saw footprints around her house on one occasion. Because Henry only encountered defendant’s alleged course of conduct once, she could not have been subjected to repeated or continuing harassment. Therefore, the circuit court correctly held that the district court abused its discretion in binding defendant over on the charge relating to alleged victim Henry.

Plaintiff also presented competent evidence which would warrant a cautious person's belief that defendant's course of conduct actually caused Barager to feel frightened and that a reasonable person would feel frightened. He testified that the footprints concerned him because someone may have been looking into his daughters' rooms, and he asked not to answer a question about the hours he worked for the safety of his family. In addition, a reasonable person who has two teenage daughters would feel frightened after frequently discovering footprints outside the daughters' bedrooms. Because plaintiff presented evidence to establish probable cause that defendant stalked Barager, we reverse the circuit court's order to quash defendant's bindover on the charge relating to him, but affirm the order regarding Henry.

We remand for further proceedings. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey