

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DONNEL HARRIS,

Defendant-Appellant.

UNPUBLISHED
February 26, 2009

No. 282281
Wayne Circuit Court
LC No. 07-013141-FH

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of first-degree home invasion, MCL 750.110a(2), second-degree home invasion, MCL 750.110a(3), domestic violence, MCL 750.812, and aggravated stalking, MCL 750.411i. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to serve concurrent terms of imprisonment of eight to 20 years for first-degree home invasion, five to ten years for second-degree home invasion, and one to ten years for aggravated stalking. The court imposed no sentence for the domestic violence conviction, announcing instead that the sentence for that conviction was suspended. Defendant appeals as of right, his sole argument being that his convictions of home invasion and aggravated stalking, stemming from the same course of criminal activity, violate his right against double jeopardy. We disagree and so affirm.

Complainant testified that she had been romantically involved with defendant, but that after the romance ended defendant engaged in a pattern of threatening behavior. Complainant described several incidents, including defendant's appearing at her house and threatening to blow up the house and shoot and kill her, entering her home by apparently breaking the security glass in a door and stealing a spare set of keys from her bedroom, calling her from her own house while she was at her father's house, arriving at her home brandishing a knife and threatening to kill her, and entering her home uninvited and unannounced and choking her until a companion forcibly intervened.

This Court reviews double jeopardy issues de novo as questions of law. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995). However, defendant does not inform this Court whether or how this issue was preserved below, in violation of MCR 7.212(C)(7). We therefore confine our review to ascertaining whether there was plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The Double Jeopardy Clauses of the federal and state constitutions prohibit a criminal defendant from being placed twice in jeopardy for a single offense. *People v Booker (After Remand)*, 208 Mich App 163, 172; 527 NW2d 42 (1994), citing US Const, Ams V, XIV; Const 1963, art 1, § 15. In this case, defendant argues that convictions of, and sentences for, aggravated stalking along with home invasion violate his right against enduring multiple punishments for a single crime. See *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). The inquiry is one of legislative intent. See *People v Calloway*, 469 Mich 448, 451; 671 NW2d 733 (2003).

A single course of conduct can result in the commission of separate crimes. “‘If each requires proof of a fact that the other does not . . . ’” double jeopardy principles are not offended “‘notwithstanding a substantial overlap in the proof offered to establish the crimes.’” *Nutt, supra* at 576, quoting *Iannelli v United States*, 420 US 770, 785 n 17; 95 S Ct 1284; 43 L Ed 2d 616 (1975). Put another way, “[a] single act may be an offense against two statutes; and *if each statute requires proof of an additional fact which the other does not*, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.” *Nutt, supra* at 577, adding emphasis and quoting *Morey v Commonwealth*, 108 Mass 433, 434 (1871).

MCL 750.110a(2) provides as follows:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

- (a) The person is armed with a dangerous weapon.
- (b) Another person is lawfully present in the dwelling.

MCL 750.110a(3) provides as follows:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

These statutes clearly concern themselves mainly with protecting a home. Although the lawful presence of a person in a dwelling can constitute an aggravating element for purposes of first-degree home invasion, and an actual or intended assault on a person in a dwelling can help

establish the elements for first- or second-degree home invasion, a person can in fact commit either crime without actually encountering or threatening a person at all.

“Stalking” is defined 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 and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 750.411i(1)(e). A stalker commits aggravated stalking if the course of conduct includes one or more credible threats against the victim, a member of the victim’s family, or another individual living in the same household as the victim. MCL 750.411i(2)(c). Stalking statutes clearly concern themselves mainly with protecting a person. Although a stalker may harass or threaten a victim at home, one can commit aggravated stalking without involving a dwelling at all.

The minimal potential overlap in the facts constituting, respectively, home invasion and aggravated stalking nonetheless leaves those crimes entirely distinct, with no elements in common. Accordingly, no double jeopardy problem arises from defendant’s conviction of aggravated stalking stemming from the same course of conduct that engendered his convictions of home invasion. See *Nutt, supra* at 577.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering