STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEE NELSON HALL,

Defendant-Appellant.

UNPUBLISHED
June 18, 1996

No. 180384
LC No. 94-007171-AR

Before: Sawyer, P.J., and Bandstra and G.R. Corsiglia,* JJ.

PER CURIAM.

Defendant was convicted by jury of stalking, contrary to MCL 750.411h; MSA 28.643(8). The trial court sentenced defendant to five years probation and, upon defendant's request, ordered that defendant be released from jail upon showing an airplane ticket to Virginia where defendant's mother had arranged for psychiatric counseling. Defendant appeals by leave granted. We affirm.

Defendant first argues that the trial court erred in refusing to grant his motion for a directed verdict at the conclusion of the people's proofs. Specifically, defendant first argues that use of the term "willful" in Michigan's stalking law demonstrates that it is a specific intent crime and that the prosecution failed to prove that he had the requisite specific intent. We disagree. A plain reading of the statute demonstrates that the term "willful" modifies the "course of conduct" element. Furthermore, the legislative history of this statute illustrates that the Legislature did not intend that this be a specific intent crime. "[B]y defining stalking with reference to a willful and malicious course of conduct, the bill would ensure that an isolated incident of unwanted attentions or words of anger spoken in the heat of a moment did not constitute the proposed crime of stalking." Senate Bill 719 and Analysis, p 8. Further, while an earlier version of the bill contained language of specific intent, such language is missing from the statute as enacted. See House Bill 5472 and Analysis, p 1. Finally, we note that the mere use of the term "willful" in a statute does not automatically indicate that the codified crime is one of specific intent. See *People v Todd*, 196 Mich App 357, 361; 492 NW2d 521 (1992).

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant also contends that the prosecution failed to produce sufficient evidence to show that his victim suffered significant emotional distress and, therefore, failed to prove the element of harassment. We conclude that the evidence was sufficient. Complainant testified that she cried, took different routes home every night from work, talked to her family about what they should do if she turned up missing and felt trapped and frightened. Under the appropriate standard of review, this Court must view the evidence presented in a light most favorable to the prosecution. *People v Premen*, 210 Mich App 211, 220; 532 NW2d 872 (1995). Having done so, this Court concludes that a rational jury could find that the complainant suffered emotional distress.

Defendant next argues that the trial court erroneously failed to instruct the jury that stalking is a specific intent crime. Since we have already concluded to the contrary, the trial court's failure to so instruct the jury was not error resulting in manifest injustice. Defendant also argues that the trial court's instructions to the jury were inadequate because they merely recited the statute and failed to "put some flesh on the bones of the statute." We disagree. As noted in *People v Stubenvoll*, 62 Mich 329, 334; 28 NW 883 (1886), "[l]anguage that is within the comprehension of persons of ordinary intelligence can seldom be made plainer by further definition or refining." No manifest injustice resulted from the instructions as given. *People v Woods*, 416 Mich 581, 610; 331 NW2d 707 (1982).

Defendant also argues that Michigan's stalking statute is unconstitutionally vague. This Court recently addressed this issue and found that the statute is not overbroad, provides fair notice of the proscribed conduct and does not give unlimited discretion to the factfinder. *People v White*, 212 Mich App 298, 309; 536 NW2d 876 (1995). Pursuant to Administrative Order 1994-4, 445 Mich xix, defendant's argument that this statute is void for vagueness fails.

Finally, defendant argues that his sentence of probation which required him to seek counseling in Virginia effectively banished him from the State of Michigan for the duration of his probation. Any argument defendant may have to the impropriety of this condition of his probation is not preserved for appeal. Where defendant specifically requested that he be allowed to go to Virginia to receive counseling, he cannot now argue that the granting of his request was erroneous. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995).

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ George R. Corsiglia