

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

April 16, 2002

No. 230525

Wayne Circuit Court

LC No. 99-010897

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

In this bench trial, the court convicted defendant of aggravated stalking, MCL 750.411i. The trial court sentenced defendant to 1½ to 5 years' incarceration at the Michigan Training Unit. Defendant appeals as of right, and we affirm.

Defendant argues that there was insufficient evidence to sustain his conviction because the prosecutor failed to meet his burden and prove that defendant's conduct actually caused the victim to feel terrorized, frightened, intimidated, threatened, or molested. We disagree.

Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to find that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Circumstantial evidence and the reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To sustain a conviction for aggravated stalking, the prosecutor must prove that defendant knowingly violated a restraining order by repeated and continued harassment of the victim, which would cause the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested and actually caused the victim to so feel. MCL: 750.411i(2); *People v Kieronski*, 214 Mich App 222, 233; 542 NW2d 339 (1995). For purpose of the offense of stalking, 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.”¹

To establish aggravated stalking, at least one of the actions constituting a violation must be in violation of a restraining order. MCL 750.411i(2)(a). This requirement was satisfied by the March 30, 1998 incident which took place while the PPO was in force.

Moreover, defendant’s argument that the prosecutor failed to sustain his burden of proof overlooks the statutorily mandated rebuttable presumption created where, as here, the defendant continued his course of conduct in violation of a court order. MCL 750.411i(5); *People v White*, 212 Mich App 298, 313-314; 536 NW2d 876 (1995). The PPO was a judicial order restraining defendant from engaging in conduct prohibited under MCL 750.411h (stalking) and MCL 750.411i (aggravated stalking). MCL 600.2950(a); *Brandt v Brandt*, ___ Mich App ___; ___ NW2d ___ (Docket No. 225375; 230952, issued February 19, 2002) slip op p 2. By engaging in acts prohibited by the PPO, defendant triggered the presumption. MCL 750.411i(5). Defendant failed to rebut this presumption and when all conflicts in the evidence are resolved in favor of the prosecutor, there is sufficient evidence to allow a reasonable trier of fact to conclude that the essential elements of the crime charged were proven beyond a reasonable doubt. *Terry, supra* at 452; *Herndon, supra* at 415.

Defendant also argues that the trial court impermissibly limited his cross-examination of the victim designed to elicit testimony that would rebut an essential element of the crime – that his actions actually caused the victim to feel “terrorized, frightened, intimidated, threatened, or molested.” We disagree.

A defendant’s constitutional right to present a defense and confront his accusers is secured by the right to cross examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993), citing *Delaware v Van Arsdall*, 475 US 673, 678; 106 S Ct 1431; 89 L Ed 2d 674 (1976) and *Douglas v Alabama*, 380 US 415, 418; 85 S Ct 1074; 13 L Ed 2d 934 (1965). A witness may be cross-examined on any matter relevant to any issue in the case, *People v Federico*, 146 Mich App 776, 793; 381 NW2d 819 (1985), but this right of cross-examination is limited and neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject. *Adamski, supra* at 138. Courts are given wide latitude to impose reasonable limits on cross-examination based on such concerns as harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant. *Id.*

Here, the Court properly interrupted defendant’s cross-examination because the disputed question was frivolous and clearly irrelevant to defendant’s previous course of questioning. Because defendant had no right to cross-examine on irrelevant matters, the question was properly limited. *Adamski, supra* at 138. Moreover, nothing prohibited defendant from properly

¹ MCL 750.411i(1)(a). Where a statute sets forth its own definitions of certain terms, those terms must be applied as defined. *Tryc v Michigan Veterans’ Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996).

questioning the victim on the pivotal question of whether she felt intimidated by defendant's conduct.

Defendant also says that the trial court abused its discretion in disregarding the probation department's recommendation and entering a disproportionate sentence, thus violating the principle of proportionality. We disagree.

The guidelines apply only to the minimum sentence for felonies for which the guidelines' manual provides sentencing range grids, *People v Compagnari*, 233 Mich App 233, 235; 590 NW2d 302 (1998), and at the time of sentencing, aggravated stalking was not one of the felonies enumerated under the judicial guidelines. Also where, as here, the trial court simply departs from the probation department's PSIR recommendation, there is no requirement that it explain its departure. Articulation of reasons for the sentence is necessary only where the trial court exceeds the sentence recommended under the sentencing guidelines. *People v Grunbaum*, 170 Mich App 821, 828; 429 NW2d 239 (1988).

Accordingly, the relevant limitations on the sentencing court's discretion are these: (1) the defendant's sentence be indeterminate, Const 1963, art 4 § 45; (2) the sentence not exceed that authorized by law, MCL 769.1(1); (3) the minimum sentence not exceed two-thirds of the maximum term, *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972); and (4) the sentence be proportionate. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). The trial court complied with all judicial requirements, and the sentence was proportionate to the circumstances of the offense and the offender. *Id.* at 636.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad