

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JOHN WAGNER,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2004

No. 244064  
Wayne Circuit Court  
LC No. 01-013205

Before: Schuette, P.J., and Meter and Owens, JJ.

SCHUETTE, J. (*dissenting*).

I respectfully dissent from the majority's conclusion that there was insufficient evidence to sustain defendant's conviction. Defendant appeals as of right from a nonjury conviction of aggravated stalking, MCL 750.411i, for which he was sentenced to five years' probation with the first six months in jail. I would affirm.

Defendant's sole issue on appeal is that the evidence was insufficient to sustain the verdict because the prosecutor failed to prove that he made a credible threat against the victim or contacted her in violation of a personal protection order (PPO). It appears from the trial court's ruling that it found that defendant had not made any threats against the victim. We therefore consider only whether he acted in violation of a PPO.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The first element of the crime is that defendant engaged in stalking. MCL 750.411i(2). Defendant does not challenge the sufficiency of the evidence regarding this element and, on review of the transcript, we find that the victim's testimony was sufficient to establish that

defendant engaged in stalking as defined by MCL 750.411i(1)(e). The second element is (1) that at least one of the acts constituting the offense is (a) in violation of a restraining order of which the defendant has notice, (b) in violation of an injunction or preliminary injunction, or (c) in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal, or (2) that the course of conduct includes making one or more credible threats against the victim or a member of her family or household, or (3) that the defendant has a prior conviction of stalking or aggravated stalking. MCL 750.411i(2).

Defendant was served with the PPO on the evening of August 3, 2001. The victim testified that defendant appeared in her yard sometime in August 2001. The victim did not specifically testify as to the date after August 3, 2001 when defendant appeared in her yard. However, the victim's sister testified that defendant called and drove by the victim's house numerous times between September 1, 2000 and August 31, 2001. Taken in the light most favorable to the prosecutor and applying appropriate deference to the trial court's responsibility as the closest examiner of the facts of this case, I am not of the definite and firm conviction that a mistake has been made.

I would affirm.

/s/ Bill Schuette