

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE JACKSON,

Defendant-Appellant.

UNPUBLISHED

September 20, 2007

No. 271506

Wayne Circuit Court

LC No. 06-001819-01

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his convictions of domestic violence, MCL 750.81(2), telephone harassment, MCL 750.540e(1)(a), and aggravated stalking, MCL 750.411i. The trial court sentenced defendant to concurrently serve 93 days in jail for the domestic violence conviction, six months in jail for the telephone harassment conviction and 18 months to five years in prison for the aggravated stalking conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction of aggravated stalking. We disagree. "This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Lanzo Const Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006) (citation omitted).

Defendant claims that the court based the conviction for aggravated stalking on allegations he violated a personal protection order (PPO) the victim had obtained. Defendant argues that because the prosecution failed to admit into evidence the alleged PPO or offer proof that defendant received actual notice of the PPO, the trial court erred in finding defendant guilty of aggravated stalking.

“Aggravated stalking consists of the crime of ‘stalking,’ MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2).” *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). MCL 750.411i(2)(a) & (c) provides:

An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

* * *

(c) The course of conduct includes the making of 1 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.

Stalking is defined in both MCL 750.411h(1)(d) and MCL 750.411i(1)(e) 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.” The trial court made specific findings of fact regarding defendant’s willful course of conduct, whether a reasonable individual would feel “terrorized, frightened, intimidated, threatened [or] harassed” by defendant’s conduct and whether the victim did suffer such feelings as a result of defendant’s behavior. Defendant does not contest that sufficient evidence was presented to support the trial court’s findings regarding the elements of stalking.

Defendant argues that, in order to elevate the charge to aggravated stalking, submission of evidence to prove that the conduct was in violation of a restraining order is required by MCL 750.411i(2). In *Threatt*, this Court discussed MCL 750.411i(2)(a) & (c) as alternative means of proving the elements of aggravated stalking. *Threatt, supra* at 505. This is consistent with the use of the word *any* in MCL 750.411i(2). “Pursuant to MCL 8.3a, undefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art. We consult a lay dictionary when defining common words or phrases that lack a unique legal meaning.” *People v Thompson* 477 Mich 146, 151-152; 730 NW2d 708 (2007) (citation omitted). The word “any” means “one, a, an or some . . . without specification or identification.” *Random House Webster’s College Dictionary* (1997). Therefore, a finding of *any* of the aggravating circumstances listed in MCL 750.411i(2), including a finding that defendant’s conduct constituted a credible threat, is sufficient to sustain defendant’s conviction.

A “credible threat” is defined in MCL 750.411i(1)(b) as “a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably

fear for his or her safety or the safety of another individual.” Voice mail messages were admitted into evidence in which defendant stated that he was going to kill the victim. This fact is not contested on appeal. Therefore, all of the necessary elements for aggravated stalking were established based on the trial court’s determination that defendant’s conduct met the definition of stalking, and the recorded threats to kill the victim comprised the requisite aggravating circumstance.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder