

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 25, 2014

v

TIMOTHY ADAM NAGEL,

Defendant-Appellant.

No. 313037
Wayne Circuit Court
LC No. 12-004858-FH

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant Timothy Adam Nagel appeals of right his jury conviction of aggravated stalking. MCL 750.411i(2). The trial court sentenced Nagel to serve 5 years on probation with the first 180 days to be served in jail without the possibility of early release. It also ordered him to participate in anger management and batterers' counseling while incarcerated. On appeal, Nagel contends that this Court must vacate his conviction because the prosecutor failed to present sufficient evidence to support every element of aggravated stalking. Because we conclude there was sufficient evidence to support the jury's verdict, we affirm.

I. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

This Court reviews a challenge to the sufficiency of the evidence by examining the "record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

B. ELEMENTS

Stalking is defined to mean 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). The phrase "course of conduct" means "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose" and harassment means "conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented

contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.” MCL 740.411i(1)(a) and (d). Emotional distress is “significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counselling.” MCL 750.411i(1)(c).

Thus, in order to prove that Nagel engaged in stalking, the prosecutor had to present evidence that Nagel: (1) willfully engaged in 2 or more separate noncontinuous acts evidencing continuity of purpose, (2) the acts involved repeated or continuing conduct directed toward a victim, including unconsented contact, (3) the acts would cause a reasonable person to suffer significant mental suffering or distress, (4) the acts actually caused the victim to suffer significant mental suffering or distress, (5) the acts would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and (6) the acts actually caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Here, Nagel concedes that there was sufficient evidence that he engaged in two separate noncontinuous acts directed at his former girlfriend, Leah Carpenter, and that those acts amounted to unconsented contact as defined under MCL 750.411i(1)(f). He nevertheless argues that those acts of unconsented contact were so “benign”—indeed, he did not utter “a single word” or do “anything else that was at all threatening” during either incident—that the jury could not find that his actions would cause a reasonable person to suffer significant mental suffering or distress, or would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. For similar reasons, there was no evidence that Carpenter actually had significant mental suffering or distress, or actually felt terrorized, frightened, intimidated, threatened, harassed, or molested. Rather, he maintains, the evidence merely supports an inference that Carpenter “felt annoyed” or perhaps “puzzled at his conduct.”

C. EVIDENCE OF TERROR AND EMOTIONAL DISTRESS

Carpenter testified that she dated Nagel from February 2011 to the end of August 2011. Although she did not explain what precipitated her actions, she stated that she broke up with Nagel on a Friday and on the very next Monday, September 6, 2011, she went to court and obtained a personal protection order (PPO) against Nagel. The order expired after one year, which was September 6, 2012.

Carpenter told the jury that she had made it clear to Nagel that she did not want “anything to do with him, that he needs to leave me alone, that he makes me feel very uncomfortable, and he knows the situation and how I feel.” Notwithstanding the PPO and her efforts to ensure that he did not contact her, Carpenter described two incidents involving Nagel, which occurred after he was prohibited from contacting her.

Carpenter testified that, in April 2012, she had just pulled into her driveway after leaving a church event. As she started to get out of her truck, she looked to her left and saw that Nagel had just pulled into her driveway on his motorcycle; he parked in front of her garage and was perhaps ten feet from her. She was “very nervous” and “scared”: “I immediately shut my door, started the truck, and I backed out into my grass out the—as fast as I could down northbound of Oak Leigh calling the police as soon as I could.” She crossed the grass because he was blocking her path and that was the only way she could leave without hitting him. As she drove away, she saw him shaking “his head at me.”

Carpenter stated that Nagel contacted her again in May 2012. She was at home sleeping downstairs while her boyfriend slept upstairs in the guest room; she woke after she heard the doorbell ringing at about 2:25 in the morning. She called the police department immediately and peeked through the window and saw that Nagel was at the door. She said she was “really scared” because she was not “expecting anyone” that early in the morning. Her boyfriend was upstairs in the guest room because the police officers suggested that he stay overnight whenever he could. She stated that she was thankful that her children were not at home because, if Nagel had busted through the door, she would have had to go through him to get to her children. Carpenter stated that Nagel left after no one answered the door.

Jeffrey Osborne testified that he was at Carpenter’s home during the incident in May 2012. He stated that as a result of “other matters in the past that happened”, police officers had instructed him “to stay as much over there as possible” He said he heard a knock on the door at around 2:24 in the morning. He got up, came downstairs, and looked out the dining room window. He saw Nagel standing on the porch. Osborne said he moved to the living room to get a different view and saw Nagel standing there fidgeting around for a few minutes after which he walked to his car and left.

Osborne described Carpenter as “very upset” and “very scared, almost like in a panic.” He stated that it was “just like she was having a nightmare almost.” He told her that she needed to calm down and call the police department, which she did.

From this testimony, the jury could find that a reasonable person would have felt terrorized, frightened, intimidated, threatened, harassed, or molested by Nagel’s two visits and that Carpenter actually felt terrorized, frightened, intimidated, threatened, harassed, or molested by his visits. The jury heard testimony that Carpenter broke up with Nagel rather suddenly and that she felt the need to immediately obtain a restraining order against him. Moreover, in addition to obtaining a restraining order, Carpenter testified that she told Nagel that she wanted nothing to do with him and that he was not to contact her because he made her uncomfortable. The jury could also infer that a reasonable person would expect Nagel to comply with the court order and avoid making contact. Despite the serious nature of the PPO and Carpenter’s warnings, the jury heard that Nagel continued to make unconsented contact with Carpenter. The evidence of Nagel’s continued unconsented contact with Carpenter gave rise to a presumption that his actions caused Carpenter to feel terrorized, frightened, intimidated, threatened, harassed, or molested. See MCL 750.411i(5) (providing that evidence that the defendant “continued to engage in a course of conduct involving repeated unconsented contact with the victim” gives rise to a “rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”); see also *People v White*, 212 Mich App 298, 313-314; 536 NW2d 876 (1995) (recognizing the statutory presumption and holding that it did not violate due process).

Notwithstanding the presumption, concerning the first incident, the jury heard that Nagel suddenly pulled into Carpenter’s driveway after she returned home from an event; he did so without warning and in a way that blocked her into her driveway. He also pulled in so suddenly that she did not have a chance to get into her home. While the jury might have found that Nagel’s arrival was mere coincidence and that he did not intend to startle her, it could also reasonably infer that he had been lying in wait or following her and that he deliberately pulled

into her driveway in order to trap her between her truck and the house. From this, the jury could further infer that a reasonable person in Carpenter's situation would have felt terrorized, frightened, intimidated, threatened, harassed, or molested. Moreover, the jury could also infer from the evidence that Carpenter immediately got back in her truck, drove across her grass to get away from Nagel, and immediately called the police, that she was actually terrorized, frightened, intimidated, threatened, harassed, or molested by Nagel's unconsented contact. MCL 750.411i(1)(e).

As for the second incident, the jury heard that Nagel again made contact with her despite the PPO and her efforts to make it clear that he should stay away by coming to her home and ringing the doorbell or knocking at 2:30 in the morning. A jury could infer that a reasonable person who had warned her ex-boyfriend not to make contact with her and went to the effort to obtain a PPO to preclude such contact would feel terrorized, frightened, intimidated, threatened, harassed, or molested if the ex-boyfriend ignored the order and came to her home in the early morning hours and began ringing the bell or knocking. And this unconsented contact again gave rise to a rebuttable presumption that it actually caused Carpenter to feel terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 750.411i(5). Even if there were no presumption, Osborne testified that Carpenter was almost in a panic when she realized Nagel was on her porch and he had to calm her down and get her to call the police. Hence, there was evidence from which the jury could conclude that Nagel's second visit actually caused Carpenter to feel terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 750.411i(1)(e).

Finally, this same evidence was sufficient to support a finding that Nagel's actions would cause a reasonable person to suffer emotional distress—that is, to have “significant mental suffering or distress”—and actually caused Carpenter to have significant mental suffering or distress. MCL 750.411i(1)(c) and (d). There was testimony that Carpenter was distraught about both incidents and, given the timing and nature of both visits, a jury could infer under the totality of the circumstances that a reasonable person in Carpenter's situation would be similarly distressed.

D. AGGRAVATION

On appeal, Nagel also argues that the prosecutor failed to present any evidence that Nagel's “alleged stalking” was done “in violation of a restraining order that was entered against him and [of] which he had actual notice” In order to convict Nagel of aggravated stalking, the prosecutor had to prove—in relevant part—that at least one of Nagel's unconsented contacts with Carpenter was done “in violation of a restraining order” and that he had “actual notice of that restraining order.” MCL 750.411i(2)(a).

Outside the presence of the jury, Nagel's trial lawyer vigorously opposed the admission of the PPO because it included the “reasons that she was seeking the PPO within the Order itself”, which he felt would prejudice the jury against Nagel. It was also unnecessary to submit the PPO to the jury, he maintained, because the defense had stipulated that “there was a Personal Protection Order in this case, and that Mr. Nagel did receive Notice.” When a defendant stipulates to an element, he or she waives the right to assert the government's duty to present evidence to the jury on that element. See *United States v Harrison*, 340 US App DC 198; 204

F3d 236, 240 (2000). Indeed, a defendant's stipulation waives even the burden to read the stipulation to the jury. *Id.* at 242-243. Nevertheless, to the extent that the trial court might have erred by failing to properly instruct the jury on the stipulation, see *United States v Ayoub*, 498 F3d 532, 545-547 (CA 6, 2007), we conclude that the prosecutor presented minimally sufficient evidence from which the jury could find that Nagel's unconsented contact with Carpenter violated a PPO and that Nagel had actual knowledge of the PPO.

At trial, Carpenter testified that she obtained a PPO against Nagel and that it was in force during the time at issue. She also identified the PPO in court and an order was admitted into evidence.

Officer Nick Grunwald testified that he responded to Carpenter's call during the May 2012 incident, pulled Nagel over about a block from Carpenter's home, and arrested him. On cross-examination, officer Grunwald clarified that he arrested Nagel for making contact with Carpenter in violation of the PPO. Considering these witnesses' testimony together with the exhibit, there was evidence from which the jury could conclude that at least one of Nagel's unconsented contacts with Carpenter violated the PPO that Carpenter obtained in September 2011.

There was also evidence from which the jury could infer that Nagel had actual notice of the PPO. In order to prove actual notice, the prosecutor only had to present evidence that Nagel actually knew about the PPO; it did not have to prove that he was formally served with notice. See *People v Threatt*, 254 Mich App 504, 506-507; 657 NW2d 819 (2002). The jury received a copy of an order entered by the court handling Carpenter's PPO. On the order, which is dated November 2011, the trial court checked the box indicating that the order involved a motion to terminate the personal protection order dated September 6, 2011. The court further indicated that it was denying the motion and that the original PPO would, therefore, remain in force. From this order, a reasonable jury could infer that Nagel moved to terminate the original PPO in November 2011. And, from that, it could infer that Nagel had to have had actual knowledge of the original PPO.

II. CONCLUSION

There was sufficient evidence to support the jury's findings that a reasonable person in Carpenter's situation would have felt terrorized, frightened, intimidated, threatened, harassed, or molested by Nagel's two visits and that Carpenter actually felt terrorized, frightened, intimidated, threatened, harassed, or molested by his visits. MCL 750.411i(1)(e). There was also sufficient evidence to support the jury's finding that Nagel's unconsented contacts would cause a reasonable person in Carpenter's situation to suffer emotional distress and actually caused Carpenter to suffer emotional distress. MCL 750.411i(1)(c) and (d). Finally, there was evidence from which the jury could conclude that Nagel's contacts with Carpenter violated an existing PPO of which he had actual notice. MCL 750.411i(2)(a).

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood