

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ION HURDUC,

Defendant-Appellant.

UNPUBLISHED

October 26, 2001

No. 214093

Wayne Circuit Court

LC No. 97-006828

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for aggravated stalking, MCL 750.411i, and assault and battery, MCL 750.81. Defendant was sentenced to five years' probation. We affirm.

Defendant rented out a home he owned to complainant, Zarafian Mariam, and her family. The Mariams shared the home with two other persons. Zarafian testified that defendant would often enter the home uninvited. Zarafian testified that at approximately 1:00 a.m. on June 26, 1997, she was awakened when defendant entered her bedroom. After this incident, Zarafian had the locks on the house changed. Defendant was not given a key. Zarafian testified that on August 17, 1997, defendant came to the home and threatened to kill her and her family if he was not given a key. Defendant then broke into the enclosed front porch by breaking a window. When approached by Zarafian, defendant struck her in the face and fled.

Defendant argues that Michigan's aggravated stalking statute is unconstitutionally vague, either on its face or as applied to the facts of his case. Defendant's argument focuses on the following exclusion found in MCL 750.711i(d): "Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose." In his brief on appeal, defendant argues that the phrase "legitimate purpose," which is not defined in the statute, is too speculative, and thus does not provide actual notice of proscribed activity, as well as encouraging arbitrary enforcement.

After the case was submitted for decision, the United States District Court for the Western District of Michigan held in *Staley v Jones*, 108 F Supp 2d 777, 788 (WD Mich, 2000)(hereinafter *Staley I*), rev'd *Staley v Jones*, 239 F 3d 769 (CA 6, 2001)(hereinafter *Staley II*), that our aggravating stalking statute was constitutionally overbroad. Like defendant in the case at hand, the defendant in *Staley I* also argued that the statute was unconstitutionally vague

because it does not define the phrase, “legitimate purpose.” *Id.* at 782. The federal district court found that the phrase was not vague because this Court had placed a limiting definition on the phrase in *People v White*, 212 Mich App 298; 536 NW2d 876 (1995). *Staley I, supra* at 786. The district court noted, however, that were it not bound by this interpretation, it would agree that the “legitimate purpose” language would be unconstitutionally vague:

In particular, the statute excludes “conduct that serves a legitimate purpose” from the definition of harassment. Unfortunately, the statute provides absolutely no guidance as to what constitutes a “legitimate purpose.” Therefore, the public and the police are left solely to their own speculative powers to determine the meaning of the clause. [*Id.* at 786 n 4.]

Defendant supplemented his argument on appeal by incorporating the reasoning and conclusions of the federal district court. Thus, while his initial constitutional argument was framed only in terms of vagueness, defendant now also argues that the statute is unconstitutionally overbroad for the reasons set forth in *Staley I*.

In *Staley II*, the United States Court of Appeals for the Sixth Circuit reversed the federal district court. The federal circuit court concluded that “the district court clearly misread” this Court’s opinion in *White*. *Id.* at 783. This misreading “improperly colored [the district court’s] analysis of the overbreadth issue.” *Id.* Next, the federal circuit court found that in *White*, this Court did not err in holding the statute was not unconstitutionally overbroad. *Id.* at 785-786. Accordingly, the federal circuit court concluded that “it cannot be said that the state court’s ruling [in *People v Staley*, unpublished per curiam opinion of the Court of Appeals, issued August 20, 1996, (Docket No. 178555),] was an unreasonable application of the substantial overbreadth test, as defined by the Supreme Court in *Broadrick [v Oklahoma]*, 413 US 601; 93 S Ct 2908; 37 L Ed 2d 830 (1973).] *Staley II, supra* at 786. We agree with the analysis set down by the federal circuit court, and also reaffirm this Court’s holding in *White* that our aggravating stalking statute is not unconstitutionally overbroad. *White, supra* at 309. Accord *People v Coones*, 216 Mich App 721, 725-726; 550 NW2d 600 (1996); *People v Ballantyne*, 212 Mich App 628, 629; 538 NW2d 106 (1995).

We also reject defendant’s argument that the statute is unconstitutionally vague. As the federal circuit court observed, the fact that the “legitimate purpose” phrase is not defined “does not transform an otherwise unambiguous statute into a vague one.” As the *White* court noted, a person of reasonable intelligence would know whether his conduct was violating the statute.”¹ Further, we believe the statute was not vague as applied to defendant because his conduct clearly falls within the bounds of the type of behavior the statute was designed to prohibit. Neither do we believe the statute “encourage[s] arbitrary and discriminatory enforcement,” *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983), either in the abstract or as applied in the case at hand.

Defendant also asserts that we should reexamine *White* in light of the United States Supreme Court holding in *City of Chicago v Morales*, 527 US 41; 119 S Ct 1849; 144 L Ed 2d

¹ *White, supra* at 312.

67 (1999). After reviewing *Morales*, we conclude that there is nothing in the Court's analysis that would cause us to revisit the relevant portions of *White*.

Next, defendant argues that the trial court failed to make adequate findings of fact and conclusions of law. We disagree. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1); MCR 6.403; *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). "Brief, definite and pertinent findings and conclusions on contested matters are sufficient, without over elaboration of detail or particularization of facts." MCR 2.517(A)(2). The sufficiency of "findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence." *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

In this case, it is clear to us that although the trial court did not specifically address defendant's claim that he had a legitimate purpose for entering the home, the trial court was aware of the issue and correctly applied the law. The court indicated that defendant "apparently felt that he had some right to be there" as owner of the property. The court found that defendant had, on at least one occasion, entered the Mariam bedroom, and had entered the home on numerous other occasions. It is clear to us that the trial court's finding that defendant's course of conduct of entering the home late at night after repeated instructions not to do so was sufficient to demonstrate that the court was aware of defendant's claim of legitimate purpose.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Donald E. Holbrook, Jr.

Judge Gary R. McDonald did not participate.