STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 29, 2013
v	Nos. 305156; 305157 Wayne Circuit Court
LAREECE ANTHONY GIPSON, Defendant-Appellant.	LC Nos. 10-001385-FC; 10-001386-FH

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

In this consolidated appeal, defendant appeals by right his bench-trial convictions of assault with intent to rob while armed (AWIRA), MCL 750.89, fourth-degree criminal sexual conduct (CSC-IV), MCL 750.520e(1)(b), and aggravated stalking, MCL 750.411i. Defendant was sentenced to concurrent prison terms of 10 to 25 years for the AWIRA conviction, 1 to 2 years for the CSC-IV conviction, and 2 to 5 years for the aggravated stalking conviction. We affirm.

Defendant first argues that there was insufficient evidence to support his convictions of AWIRA and aggravated stalking. We disagree.

We review de novo claims of insufficient evidence in criminal cases. *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011). We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421, 428; 646 NW2d 158 (2002). The prosecution must prove all essential elements of the offense beyond a reasonable doubt and "[c]ircumstantial evidence and reasonable inferences arising therefrom may be used to prove the elements of a crime." *People v Brantley*, 296 Mich App 546, 550; 823 NW2d 290 (2012). Questions concerning the weight of the evidence and the credibility of the witnesses are reserved for the fact finder; conflicts in the evidence must be resolved in the prosecution's favor. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). Questions of law are reviewed de novo. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

Under Michigan's AWIRA statute, MCL 750.89, the prosecution must prove: "'(1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed.'" *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003), quoting *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). The statute explicitly requires that the

defendant be "armed with a dangerous weapon, *or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon*[.]" MCL 750.89 (emphasis added).

Defendant argues that there was insufficient evidence to prove that he used a weapon or an article used or fashioned as a weapon. However, the evidence showed that defendant "put his [left] hand in his pocket and pointed" his pocket at the victim. Defendant then stated, "I need a couple of bucks. Give me a couple of bucks. I need money." The victim denied seeing a weapon, but testified that "[t]he way the pocket was pointed, I thought he had a gun. It was pointy." Defendant then proceeded to try, unsuccessfully, to take the victim's purse. The trial court explicitly credited the victim's testimony and discredited defendant's opposing testimony. Questions of witness credibility and the weight of the evidence are reserved for the fact finder, in this case, the trial court. *Harrison*, 283 Mich App at 378.

The facts in this case resemble those of *People v Taylor*, 245 Mich App 293; 628 NW2d 55 (2001), wherein this Court found that the victim's testimony was sufficient to establish the use of a weapon or feigned weapon. In *Taylor*, the defendant combined the threatening words, "This is a stick up," with a gesture inside his jacket. *Id.* at 296, 302-303. Turing to the present case, defendant's request for money while *pointing* his pocket at the victim established a threat and was sufficient to establish beyond a reasonable doubt that defendant was "armed with a dangerous weapon, or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon" within the meaning of MCL 750.89.

Defendant next argues that the evidence presented was insufficient to prove the requisite specific intent because his actions were governed by his mental illness. AWIRA is a specific-intent crime that requires evidence of the defendant's intent to rob or steal. *Akins*, 259 Mich App at 554. The specific intent to rob or steal "may be inferred from the surrounding facts." *People v Harris*, 110 Mich App 636, 641; 313 NW2d 354 (1981). As noted previously, the victim testified that defendant asked for money while pointing his pocket at the victim and also attempted to take her purse; the trial court found the victim's testimony credible. No evidence was presented at trial regarding defendant's mental illness. We conclude that there was sufficient evidence to prove beyond a reasonable doubt that defendant possessed the requisite intent.

Defendant next argues that there was insufficient evidence presented at trial to support his aggravated stalking conviction. "Aggravated stalking consists of the crime of 'stalking,' . . . and the presence of an aggravating circumstance . . . ." *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). "Stalking" is 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 750.411h(1)(d); MCL 750.411i(1)(e); see also *People v Kieronski*, 214 Mich App 222, 229, 233-234; 542 NW2d 339 (1995). A "[c]ourse of conduct" is "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411i(1)(a).

Conduct constitutes "[h]arassment" if the conduct is "directed toward a victim [and] 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 750.411i(1)(d). MCL 750.411i(1)(f) defines "[u]nconsented contact" as "any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued." MCL 750.411i(1)(f) lists several actions that constitute "[u]nconsented contact," but explicitly notes that "[u]nconsented contact" "is not limited to" the enumerated actions. "Contacting th[e] individual by telephone" is one of the enumerated actions. MCL 750.411i(1)(f)(*v*).

MCL 750.411i(2) lists the aggravating circumstances that establish aggravated stalking. One of these aggravating circumstance requires that "[a]t 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." MCL 750.411i(2)(a).

Defendant only challenges whether there were two or more acts that constituted a pattern of conduct and whether defendant's phone call to the daycare center constituted an act of "[u]nconsented contact" pursuant to MCL 750.411i(1)(f) and in fulfillment of MCL 750.411i(2).

There was sufficient evidence to establish at least two separate acts that constituted a pattern of conduct with a continuity of purpose. First, the victim testified that on January 7, 2010, defendant entered her vehicle uninvited, tried to kiss her, made sexual comments to her, and ran his hand up her thigh. At trial, defendant admitted that a PPO was issued as a result of this incident in mid-January 2010. Second, a Head Start employee spotted someone he believed to be defendant on Head Start property on January 20, 2010. Third, defendant called the private, unlisted phone number at the Head Start daycare after the PPO was served on him. The PPO prohibited defendant from calling this number. Defendant called and asked if Head Start was hiring. Defendant claims he mistakenly called this number when he pressed buttons on his phone; however, during his testimony at trial, defendant claimed he did not know how he received the phone number. Based on this evidence, it is logical to infer that defendant received the phone number from the PPO order.

The trial court identified defendant's contact with the victim on January 7, 2010, the subsequent telephone call to her place of employment, and the testimony concerning defendant's presence at the victim's place of employment on January 20, 2010, as the acts constituting stalking. The trial court found the testimony of the victim, employees of Head Start, and the police to be credible.

This constituted sufficient evidence to establish a pattern of conduct in violation of the stalking statute. Even if defendant's presence on Head Start property on January 20, 2010, was not for the purpose of harassing the victim (defendant lived nearby and was frequently outside), this act was not essential to proving stalking because only two acts are required and it was reasonable for the trial court to infer that defendant's purpose in calling the Head Start center was to "haras[s]" the victim within the meaning of MCL 750.411h(1)(c) and MCL 750.411i(1)(d). These acts, taken together, constituted a pattern of conduct with a continuity of

purpose, namely to harass the victim. Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence from which the trial court could have found beyond a reasonable doubt that defendant engaged in at least two acts, constituting a pattern of conduct, for the purpose of harassing the victim.

Defendant argues that his phone call to the Head Start center did not constitute "[c]ontacting th[e] victim by telephone" pursuant to MCL 750.411i(1)(f)(*v*) because the victim did not answer the phone.[1] Contrary to defendant's argument, MCL 750.411i(1)(f) does not provide an exhaustive list of actions that constitute unconsented contact. The language of the statute explicitly states that "[u]nconsented contact . . . includes, but is not limited to" the enumerated actions. MCL 750.411i(1)(f). Because defendant's act of calling the victim at her workplace is similar in nature and fits logically with the other actions set forth in MCL 750.411i(1)(f)(*i*)-(*vii*), we cannot conclude that the trial court erred by determining that the telephone call constituted an act of "[u]nconsented contact" under MCL 750.411i(1)(f).

We conclude that there was sufficient evidence presented at trial from which the trial court could have concluded beyond a reasonable doubt that defendant committed aggravated stalking. MCL 750.411i(1) and (2)(a).

Defendant next argues that his convictions of AWIRA and aggravated stalking were against the great weight of the evidence. "The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). Questions of witness credibility are for the trier of fact, and conflicting testimony is not enough to grant a new trial. *People v Lacalamita*, 286 Mich App 467, 469-470; 780 NW2d 311 (2009).

Defendant relies on his sufficiency of the evidence argument and does not present any additional arguments regarding the great weight of the evidence issue. Nevertheless, we conclude that the evidence presented at trial does not preponderate so heavily against defendant's convictions that it would constitute a miscarriage of justice to allow the verdicts to stand.

Evidence was presented that defendant pointed his pocket at the victim in the form of a weapon while requesting money. While defendant's account of the facts conflicted with the victim's account, this divergence in the testimony is insufficient to justify a new trial. *Id.* As explained earlier, the evidence also established that defendant acted with the specific intent to rob or steal.

With regard to whether defendant's acts constituted a pattern of conduct with a continuity of purpose within the meaning of the stalking and aggravated stalking statutes, the evidence demonstrated that (1) defendant assaulted the victim in her vehicle on January 7, 2010, (2) a PPO was issued as a result of that incident, (3) defendant was in the parking lot of the Head Start center on January 20, 2010, and (4) defendant called the victim's place of employment after the

[1] Defendant does admit on appeal that his telephone call violated the PPO.

PPO was issued. At the very least, the incident of January 7, 2010, and the phone call to the victim's place of employment constituted a pattern of conduct designed to harass the victim. Defendant's AWIRA and aggravated assault convictions were not against the great weight of the evidence.

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter