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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0783**

State of Minnesota,
Respondent,

vs.

Daniel Allen Belleville,
Appellant.

**Filed March 11, 2013
Reversed
Cleary, Judge**

Hennepin County District Court
File No. 27-CR-11-7793

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Smith, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Following a jury trial, appellant was convicted of felony stalking under Minn. Stat. § 609.749, subds. 2(a)(2), 4(a) (2008). Appellant challenges his conviction, arguing that

there was insufficient evidence to prove that he knew or had reason to know that his conduct would frighten the victim; that the district court erred by refusing to instruct the jury that appellant was not guilty of stalking if he had a lawful commercial purpose for being at the shopping mall where stalking allegedly occurred; that the district court erred by admitting *Spreigl* evidence; and that the district court erred by admitting videotape evidence without proper foundation and authentication. Because there was insufficient evidence to support the conviction, we reverse.

FACTS

In March 2010, K.T. met with an officer from the Edina Police Department to report a stalking complaint. K.T. told the officer that appellant Daniel Belleville frequently visited the Ben & Jerry's kiosk at the shopping mall where she worked. Appellant would usually visit the kiosk on Thursdays, when K.T. was working. K.T. had worked at a different Ben & Jerry's location during the summer of 2009, and she reported that appellant frequently visited that stand-alone kiosk as well. K.T. had transferred to the shopping mall location, and appellant started visiting that location once he found out that K.T. was working there. K.T. told the officer that appellant had commented on her body, which made her feel uncomfortable. As a result of the meeting with K.T., the officer obtained a warrant to attach a GPS device to appellant's car for 60 days. The device would alert the officer any time that appellant traveled into the area around the shopping mall or K.T.'s home. The officer received three alerts that appellant had traveled to the shopping mall. The officer obtained surveillance videos from the shopping mall for those days. The videos showed appellant walking in and near K.T.'s

places of employment¹ and leaving the shopping mall without purchasing anything. In July 2010, appellant purchased an ice cream cone from K.T., she reported his presence to shopping mall security, and appellant was arrested a short distance from the mall.

Appellant was charged with felony stalking under Minn. Stat. § 609.749, subds. 2(a)(2), 4(a). A jury trial was held in December 2011. At trial, K.T. testified that appellant frequently visited the kiosks where she worked. She testified that appellant had asked her a personal question on two separate occasions.² She testified that she was scared to go to work every day, especially on the days that appellant usually visited the kiosks. She also stated, “If I ever saw anyone who looked like him or was wearing similar clothes, I got very nervous. I would get shaky and kind of just close down and just go into this shell, and I was just very scared all the time.”

The police officer who investigated the matter also testified at trial. During the officer’s testimony, the state introduced the surveillance videos from the shopping mall, without foundation, and the officer described for the jury what appellant was doing in each video. The state presented evidence, through the officer’s testimony, that appellant had a prior stalking conviction resulting from incidents that occurred in 2006, and one of the victims of that stalking also testified.

At the close of trial, the court instructed the jury about the elements of stalking. Appellant requested that the court include an instruction explaining that appellant was not

¹ K.T. also worked at a retail store in the shopping mall. Although the surveillance videos show appellant walking into that store, K.T. testified that she never saw him there.

² K.T. testified that appellant asked her if she lived in Minneapolis and asked her if she worked out. K.T. said that when she told appellant that she did not work out, he “said it looks like it; you look good.”

guilty of stalking if he had a lawful commercial purpose for being at the shopping mall.

The court refused to give the requested instruction. The court stated:

[A]s I read Crim JIG 13.64, it creates a defense, that is, exceptions for specific people performing specific acts . . .

Those specific people I envision to be delivery men, those serving subpoenas, private investigators, all of which, in a different context, could be viewed as individuals who are harassing somebody, but because of their job or because of the specific position that they hold, they're permitted to essentially engage in harassment-like behavior.

And what you're asking for here essentially is an exception that would essentially swallow the rule. I think you're free to argue that he has a right to be there, he has a right to walk around, he has a right to shop, he has a right to purchase. But he doesn't necessarily have a right to a specific instruction that gives him an affirmative defense that requires the State to disprove it. And so, I'm going to deny the request to include 13.64.

The jury found appellant guilty of stalking under Minn. Stat. § 609.749, subd. 2(a)(2).

This appeal follows.

DECISION

Appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he knew or had reason to know that his conduct would cause K.T. to feel frightened, threatened, oppressed, persecuted, or intimidated.

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing

court must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

A person is guilty of harassment/stalking if he “harasses another” by stalking, following, monitoring, or pursuing that person, whether in person or through technological or other means. Minn. Stat. § 609.749, subd. 2(a)(2). To “harass” means “to engage in intentional conduct which: (1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and (2) causes this reaction on the part of the victim.” Minn. Stat. § 609.749, subd. 1 (2008).

The evidence presented here does not demonstrate that appellant knew or should have known that his conduct frightened, threatened, oppressed, persecuted, or intimidated K.T. When viewed in the light most favorable to the conviction, the evidence presented at trial demonstrates that appellant frequently visited the mall kiosk where K.T. worked, visited the stand-alone kiosk while she was working, and asked her two personal questions. K.T. testified that she was caught off guard by appellant’s questions and was not sure how to answer, but just answered honestly. Both incidents occurred when appellant was buying an ice cream cone. Although K.T. testified that the questions made her uncomfortable and nervous, she did not tell appellant that his conduct was bothering her. There is no evidence to indicate that K.T. demonstrated any outward signs of discomfort that would have signaled to appellant that his conduct was bothering her. She testified that both times she merely answered his question and finished the transaction.

The state also presented evidence that appellant had a previous stalking conviction resulting from a somewhat similar situation. The victim in that situation testified that she started crying when she saw appellant in the parking lot of her school. The state argues that, based on the previous conviction, appellant knew or should have known that his conduct would scare a young girl. The evidence regarding appellant's previous stalking conviction does not demonstrate beyond a reasonable doubt that he knew or should have known that his conduct frightened, threatened, oppressed, persecuted, or intimidated K.T. In the previous situation, appellant did not approach the victim, but stared at her in a bowling alley where she was socializing with friends and, a week later, showed up in the parking lot of her high school and stared at her again. In contrast, appellant here was interacting with K.T. at her place of work in the same manner as would other customers. When appellant asked K.T. questions, she answered the questions and finished the transactions. K.T. did not begin to cry in response to appellant's questions or demonstrate in any other way that she was frightened by him.

Finally, the state argues that appellant should have known that his conduct was making K.T. frightened because she testified that whenever she saw "anyone who looked like him or was wearing similar clothes, I got very nervous. I would get shaky and kind of just close down and just go into this shell, and I was just very scared all the time." Although those reactions may have indicated to appellant that K.T. was frightened by him, K.T. did not testify that she had this reaction when she actually saw appellant or that she had any outward reaction or emotion that appellant observed. She testified that she had this reaction when seeing other customers that resembled appellant. She also

testified that she did not see appellant from the time he asked her a personal question about whether she worked out until the last time she saw him in July 2010, when “[h]e ordered ice cream and I gave it to him and rang him up and immediately called security.”

The evidence was insufficient to demonstrate that appellant knew or had reason to know that his conduct intimidated, frightened, threatened, oppressed, or persecuted K.T., and his conviction is therefore reversed.³

Reversed.

³ Appellant makes several other arguments regarding the refusal to use the requested jury instruction; the admission of the *Spreigl* evidence; and the admission of the surveillance videos. Because we reverse appellant’s conviction based on the insufficiency of the evidence, we need not address those arguments.