

Circuit Court for Worcester County
Case No. 23-K-16-000142

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1581

September Term, 2016

MICHAEL WAYNE MURRAY

v.

STATE OF MARYLAND

Arthur,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: January 12, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State charged appellant, Michael Wayne Murray, in the Circuit Court for Worcester County, with one count of stalking, ten counts of trespass, and eleven counts of harassment. Following a bench trial, the court returned guilty verdicts of stalking, eight counts of trespass, and eight counts of harassment. The court sentenced Murray to five years' imprisonment on the stalking count and 90-day concurrent sentences on each of the other counts.

In his appeal, Murray does not challenge the trespass and harassment convictions, arguing only that the evidence was insufficient to sustain his conviction for stalking. We are not persuaded, and shall affirm.

BACKGROUND

The complaining witness with respect to all of the charges was Amy Braciszewski who, with her young daughter, moved into a house across the street from the residence of Murray and his mother, in Berlin, Worcester County.

In her testimony, Ms. Braciszewski described numerous incidents when Murray came onto her residential property, without her invitation and, on several occasions, over her objection. His conduct consisted, variously, of merely standing and staring at her house; of knocking on the door; of approaching, and looking into, her windows; of confronting her while in her garage; and, of knocking on her bathroom window while she was in the shower. Her testimony related to many incidents of Murray's disturbing conduct. Ultimately, she posted a "No Trespassing" sign and installed a motion-activated "deer camera" in her kitchen window, from which she obtained many photos of Murray on her property. Eighty-three of those photos were introduced as State's exhibits.

In addition to Ms. Braciszewski, the State called her landlord, also a neighbor, who had observed, on one occasion, Murray looking into the bedroom window of the house that Ms. Braciszewski was renting from her. The landlord confronted Murray and ordered him off the property and called the police. Detective Thomas Moore of the Worcester County Sheriff’s Office, testified to his interview with Murray. Det. Moore testified that during the interview, Murray had identified himself in several of the photos taken from the deer camera and had excused his conduct as having been “set up” by Ms. Braciszewski’s because she had invited him onto her property.

At the close of the State’s case, Murray moved for judgment of acquittal, which the court granted in part and denied in part. The motion relating to the stalking count, which is our focus, was denied. Murray declined to testify on his behalf or to present any evidence in defense of the charges.

DISCUSSION

Standard of Review

When reviewing whether the evidence produced at a bench trial was legally sufficient to support the conviction, “we examine the record solely to determine whether ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Fuentes v. State*, 454 Md. 296, 307 (2017) (quoting *McKenzie v. State*, 407 Md. 120, 136 (2008)). When examining the trial record, “we view the State’s evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.” *Id.* (citing *State v. Rendelman*, 404 Md. 500, 513–14 (2008)).

Because it is not this Court’s role to retry the case, *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted), we conclude that “[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.” *Fone v. State*, 233 Md. App. 88, 115 (2017) (quoting *Larocca v. State*, 164 Md. App. 460, 471 (2005) (en banc)). As such, “we give ‘due regard to the [fact finder’s] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Id.* (*Larocca*, 164 Md. App. at 471-72).

Murray’s Argument

The crux of Murray’s argument on appeal is that “the State failed to prove that his actions satisfied the elements of the crime [stalking,]” and that, therefore, there was insufficient evidence to convict him of the offense. For support, Murray relies exclusively on *Hackley v. State*, 389 Md. 387 (2005). His reliance on *Hackley* is misplaced. *Hackley* had physically assaulted his ex-girlfriend with a gun and made multiple threats on her life and the lives of those close to her. 389 Md. at 389-91. *Hackley* had argued that the statute required him to approach or pursue the victim in order for him to be found guilty of stalking. *Id.* at 392. At that time, the statute defined “stalking” as “a malicious course of conduct that includes approaching or pursuing another person with intent to place that person in reasonable fear[.]”¹ *Id.* at 391-92. The Court of Appeals disagreed with

¹ The *Hackley* Court analyzed an earlier version of the statute, prior to the effect of the 2003 amendments. In 2003, the statute was amended to include, in relevant part, subsection (iii), relating to rape offenses, and subsection (iv), relating to false imprisonment. See 2003 Md. Laws, ch. 313. The amendment also added language

Hackley’s argument and, in analyzing the legislative intent of the statute, held that “any malicious course of conduct intended to place another person in reasonable fear . . . constitutes stalking.” *Id.* at 397.

Murray contends that, unlike in the instant case, Hackley’s victim had “good reason to fear him because he had assaulted her and left her threatening letters.” He argues that “[t]here was no reason for [him] to know that his conduct would place Ms. Braciszewski in reasonable fear of death, serious bodily injury, assault, or a sex offense.” He claims that “[a]t worst, [he] came to Ms. Braciszewski’s property on repeated occasions and looked into the windows or knocked on doors or windows. He never threatened Ms. Braciszewski or attempted to touch her.” Further, Murray asserts that such actions “would not have put a reasonable person in fear.” We are not persuaded by his argument.

Sufficiency of the Evidence

Murray was charged under Md. Code, (2002, 2012 Repl. Vol.) Criminal Law Article (C.L.), § 3-802(a), which provides, in relevant part:

- (a) In this section, “stalking” means a malicious course of conduct that includes approaching or pursuing another where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear:
 - (1) (i) of serious bodily injury;
 - (ii) of an assault in any degree;
 - (iii) of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree;

regarding intent, providing that “where the person intends to place or knows or reasonably should have known the conduct would place another [in reasonable fear.]” *Id.*

(iv) of false imprisonment; or

(v) of death, or

(2) That a third person likely will suffer any of the acts listed in item (1) of this subsection.²

Moreover, C.L. § 3-801 defines “course of conduct” as “a persistent pattern of conduct, composed of a series of acts over time, that show a continuity of purpose.”

The record is clear that Murray engaged in a persistent pattern of conduct, composed of a series of acts over time, that show a continuity of purpose. As Ms. Braciszewski described in her testimony, from the day she moved into her residence in August 2014, Murray began “watching me.” He was

[s]tanding in his garage or near his garage just watching me come and go, watching me mow the grass, watching me unpack. Watched me put a roof on my shed. Just blatantly watching.

The conduct continued, with greater frequency and more boldly, from August 1st 2015, until Murray’s arrest on April 21, 2016. Ms. Braciszewski told the court of Murray’s watching her, opening her car door, confronting her in her garage, looking into her windows, knocking on her door and tapping on her windows, many times after she ordered him to not come onto the property. Indeed, after being confronted by police with the photos produced by the deer camera, Murray conceded his presence, on those occasions, on her property.

² Recent amendments broadening the scope of the statute, effective October 1, 2016, do not impact this case.

The essence of the statute is whether Ms. Braciszewski was placed in “reasonable fear” of serious bodily injury, assault, rape or sexual offense, false imprisonment, or death. It is significant that Ms. Braciszewski was a single woman living alone with her, then, 13-year old daughter throughout the course of these events. It was her testimony that she was made to feel “very uncomfortable.”

She told of a knock on her window while she was in the shower that “was startling” – “it scared me.” She testified that she had looked through the blinds and observed Murray “leaving my bathroom window headed back towards his house.” On a later occasion, she testified that she had confronted Murray after he had knocked on her front door and when she asked what he wanted, he replied “You know what I want.” She told Murray to leave her property and described her reaction to his “yelling at me” in response, as “I was very upset. I was angry. I was scared.”

As time passed, she testified of locking herself in her bedroom and of being “glad that my daughter wasn’t home.” In fact, at one point she sent her daughter to spend time with her father, out of concern for her safety. She was asked by the prosecutor:

[PROSECUTOR]: And during this time that Mr. Murray was engaging in this behavior, what, if anything, were you afraid that he would do?

[MS. BRACISZEWSKI]: I was afraid of everything I’ve ever seen on TV. I don’t know what he’s capable of. I was afraid for my life. I was afraid he would be violent. I was afraid he would try to rape me. Every horrible thing I’ve ever seen on TV went through my mind.

PROSECUTOR]: How did you feel living in that home during these eight months?

[MS. BRACISZEWSKI]: It was unsettling. It was hard to -- inside my house locked in I felt unnerved, but kind of safe, but like I was being watched. It's just unnerving. I would run from my car to my house. I would make sure that I wasn't home or coming home or going out after dark. If I had to come home after dark, I would literally run from my car to the door. Started pulling my car up further so it was a shorter distance.

She explained that her reasons for getting the deer camera as “I was unsettled” – “I was scared” and that she “wanted proof[.]” The testimony of Ms. Braciszewski as to Murray’s conduct was uncontroverted. Indeed, as Judge Moylan recently observed, in *Geiger v. State*, ___ Md. App. ___, No. 2668, Sept. Term, 2016, slip op. (filed Dec. 5, 2017), “[o]n the merits, it is not without significance that [Geiger] did not testify and that he offered neither any witnesses nor other evidence in his defense.” *Geiger*, slip op. at 2.

We are satisfied, as was the trial court, that the State offered evidence sufficient to establish a violation of the prohibition against stalking as defined by C.L. §§ 3-801 and 3-802.

**JUDGMENT OF THE CIRCUIT
COURT FOR WORCESTER COUNTY
AFFIRMED; COSTS ASSESSED TO
APPELLANT.**