

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN JAY FELDMAN A/K/A
BENJIMAN J. FELDMAN A/K/A
MICHAEL BEN MICHAEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52035

FILED

MAY 18 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of stalking and aggravated stalking. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On appeal, Feldman contends, among other things, that (1) he was convicted of unlawful conduct that occurred prior to the three-year statute of limitations and (2) his double jeopardy rights were violated because his conviction is based on conduct for which he had previously been convicted.¹ For the following reasons, we conclude that Feldman's arguments fail, and therefore, affirm the district court's judgment of conviction.

¹Feldman also challenges both convictions on the grounds that (1) the district court committed various erroneous evidentiary rulings, (2) the district court should have provided the jury with an adverse destruction of evidence instruction, (3) multiple instances of prosecutorial misconduct warrant reversal of his convictions, (4) there is insufficient evidence to support his convictions, and (5) cumulative error warrants reversal. Having thoroughly reviewed all of Feldman's miscellaneous alleged errors, we are not convinced that any of them have merit or warrant further discussion by this court.

Aggravated stalking is a continuing offense

Feldman contends that his conviction of aggravated stalking must be reversed because he was convicted of unlawful conduct that occurred prior to NRS 171.085's three-year statute of limitations. We disagree because aggravated stalking is a continuing offense and the limitations period did not begin to run until after Feldman committed the last unlawful act.

Generally, an indictment for any felony, other than those specifically enumerated under NRS 171.085(1), must be filed within three years after the commission of the offense. See NRS 171.085(2). When a felony is deemed to be a "continuing offense[,] . . . the statute of limitations does not begin to run until the continuous commitment of the offense is completed." Perelman v. State, 115 Nev. 190, 192, 981 P.2d 1199, 1200 (1999) (concluding insurance fraud was a continuing offense).

NRS 200.575 criminalizes stalking and aggravated stalking in Nevada. Under NRS 200.575(1),

[a] person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel [as such] . . . commits the crime of stalking.

A person commits the crime of aggravated stalking by "commit[ing] the crime of stalking and in conjunction therewith threaten[ing] the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm." NRS 200.575(2). The statute further defines the phrase "[c]ourse of conduct" to mean "a pattern of conduct which

consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.” NRS 200.575(6)(a).

Because the plain language of the statute does not criminalize a single unlawful act, but instead criminalizes continuous unlawful conduct, we conclude that aggravated stalking is a continuous offense. Accord Rodriguez-Cayro v. State, 828 So. 2d 1060, 1060-61 (Fla. Dist. Ct. App. 2002) (construing a similarly phrased stalking statute, the Florida District Court of Appeal concluded that “stalking is a continuing course of conduct crime for which the statute of limitations did not begin to run until the alleged course of conduct ended.”). Therefore, since Feldman’s unlawful conduct did not cease until his arrest, the statute of limitations did not begin to run until then. See Perelman, 115 Nev. at 192, 981 P.2d at 1200. Accordingly, this argument fails.

Feldman’s double jeopardy rights were not violated


Feldman contends that his double jeopardy rights were violated because the State introduced evidence of conduct for which he had previously been convicted. For the following reasons, we disagree.


While the State introduced evidence of Feldman’s previous conduct, which resulted in his prior convictions, this evidence was used solely for the purpose of demonstrating the reasonableness of the victim’s fear of death or substantial bodily harm under the aggravated stalking statute. See NRS 200.575(2). The district court repeatedly instructed the jury during trial that any evidence of Feldman’s conduct prior to 2002 was to be used solely for the purpose of determining the reasonableness of the victim’s fear, and the district court provided the jury with three separate jury instructions stating as much.

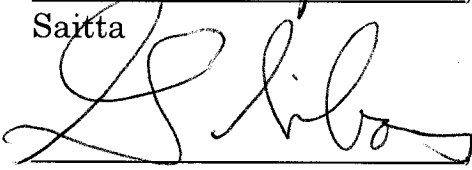
Because this court presumes that juries will follow the instructions given to them at trial, see, e.g., Summers v. State, 122 Nev.

1326, 1333, 148 P.3d 778, 783 (2006), we conclude that the jury did not convict Feldman of aggravated stalking based on his prior criminal conduct. Therefore, Feldman's double jeopardy rights were not violated.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____ J.

Cherry
 _____ J.

Saitta
 _____ J.

Gibbons

cc: Eighth Judicial District Court Dept. 7, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We also conclude that Feldman's related arguments that evidence of his prior misconduct was inadmissible as prior bad acts under NRS 48.045(2) and that the State failed to provide him with adequate notice of its intent to use the evidence are equally without merit.