2017 IL App (1st) 151493-U

Fifth Division
March 24, 2017

No. 1-15-1493

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 21246
	)	
TIMOTHY HINSDALE,	)	Honorable
	)	Noreen Love,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for stalking affirmed over his contentions that the trial court erred in allowing the State to amend the indictment before trial, that there was an impermissible variance between the indictment and the evidence at trial, and that the evidence was insufficient to convict him of the offenses.

¶ 2 Following a bench trial, defendant Timothy Hinsdale was convicted of three counts of stalking (720 ILCS 5/12-7.3(a)(1) (West 2012)) and sentenced to concurrent terms of two years' probation. On appeal, defendant contends that: (1) the trial court erred in allowing the State to amend Counts 2 and 3 of the indictment, which prior to the amendment were void for failing to

comply with the stalking statute; (2) there was an impermissible variance between Counts 2 and 3 of the indictment and the evidence at trial; and (3) the evidence was insufficient to sustain all three convictions. We affirm.

¶ 3 The State charged defendant by indictment with three counts of stalking pursuant to section 12-7.3(a)(1) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-7.3(a)(1) (West 2012)), all for conduct beginning on June 15, 2013, and continuing through October 8, 2013.

¶ 4 Count 1 alleged that defendant knowingly engaged in a course of conduct directed at Adrianna Chavarin in that he "phot[o]graphed or videotaped" her, and he knew or should have known that this course of conduct would cause a reasonable person to fear for her safety or the safety of a third person, specifically Tracey Chavarin or Gabriella Chavarin.[1]

¶ 5 Count 2 alleged that defendant knowingly engaged in a course of conduct directed at Tracey in that he "photographed [her] while driving northbound on Mannheim Road at Roosevelt in Westchester, Cook County, Illinois," and he knew or should have known that this course of conduct would cause a reasonable person to fear for her safety or the safety of a third person, specifically Adrianna or Gabriella.

¶ 6 Count 3 alleged that defendant knowingly engaged in a course of conduct directed at Gabriella in that he "pulled into [her] residence located at [Canterbury] in Westchester, Cook County, Illinois and began singing as [she] was looking at [him] from inside her residence located at [Canterbury] in Westchester, Cook County, Illinois," and he knew or should have known that this course of conduct would cause a reasonable person to fear for her safety or the safety of a third person, specifically Adrianna or Tracey.

[1] Because the entire Chavarin family is involved in this case, we will use the family members' first names throughout.

¶ 7 On the day of defendant's trial, directly before opening statements, the State sought leave to amend all three counts of the indictment. The State informed the court that it "did speak with [defense] Counsel." Defense counsel informed the court he had "[n]o objection" to the amendments. The court allowed the amendments. First, the State amended all three counts to change the date on which defendant's conduct commenced from June 15, 2013, to April 11, 2013. The State noted that the changes were "reflected within the discovery" and stated there was "additional language that need[ed] to be added" to Counts 2 and 3.

¶ 8 After the State's amendment, Count 2 alleged that defendant knowingly engaged in a course of conduct directed at Tracey in that he "photographed [her] while driving northbound on Mannheim Road at Roosevelt in Westchester, Cook County, Illinois, *and appeared outside of her house located at [Canterbury] and [Pelham] in Westchester*." The rest of the count remained the same.

¶ 9 After the State's amendment, Count 3 alleged that defendant knowingly engaged in a course of conduct directed at Gabriella in that he "pulled into [her] residence located at [Canterbury] in Westchester, Cook County, Illinois and began singing as [she] was looking at [him] from inside her residence located at [Canterbury] in Westchester, Cook County, Illinois, *and appeared outside her residence located at [Pelham] in Westchester*." The rest of the count remained the same.

¶ 10 Count 1 was not amended beyond the date change.

¶ 11 The case proceeded to trial, where the evidence demonstrated that, in August 2008, the Chavarin family, consisting of Javier, the father, Tracey, the mother, and daughters, 11-year-old Gabriella and 17-year-old Adrianna, began renting a single-family residence located at Canterbury Street in Westchester. The residence was owned by the Westchester Public Library

and located next to the library. Defendant was on the Westchester Public Library's board and eventually became the library's property liaison. After that time, if a problem arose at the residence, the family was supposed to contact him. Defendant lived down the block from the Chavarin residence, approximately two houses to the west and two houses to the south on Kensington Avenue. In order for defendant to walk to the library from his house, he had to pass the Chavarin residence. The family began to have issues with defendant after a July 2010 flood caused standing water and mold in their basement. They contacted the property manager and a different property liaison, but they never received a response until they attended a library board meeting and complained.

¶ 12 Tracey testified that, following their complaints and starting in November 2010, defendant would stop at the Chavarin residence and stare at it for "[u]nder a minute" "every couple of months" usually while on his way to a library board meeting or walking home from a meeting. It was around this time that their basement was being refinished after the flood damage. She did not report defendant's conduct to the police and was not in fear of him at the time. Tracey acknowledged that, in November 2012, the family was late to pay their rent, but stated this was the only time they were late.

¶ 13 On April 11, 2013, at approximately 7:30 a.m., Tracey left her residence for work. While she was driving on Mannheim Road, Tracey noticed that defendant was driving behind her. She recognized his orange vehicle. Defendant moved into the adjacent lane and drove beside her until they both stopped at a stoplight. Defendant rolled down his window and took a photograph of Tracey using his cell phone. Tracey immediately called the police and reported defendant's conduct. Later that day, after work, she filed a complaint against him. Based on defendant's "previous behaviors," Tracey said she feared him. She expounded that those previous behaviors

included the instances in which he stared at their residence, but also her unsuccessful requests to him to fix her stove top. At trial, Tracey identified People's Exhibit No. 1 as a photograph of her and her vehicle that appeared to be from April 11, 2013.

¶ 14 Javier testified that, between April 2013 and July 2013, when he was outside the residence, usually cutting the grass or just "hanging out," defendant would drive by in his orange vehicle, give him "the finger" and say "f*** you." These incidents occurred approximately three times per week. Javier told Tracey about the incidents, but never reported them to the police or the library board.

¶ 15 Adrianna testified that, during June 2013, a few times per week, defendant would drive slowly past the family's house, "[n]early stopping in front," look at the house and "yell[] things out towards" the house. Because the house's windows were closed, Adrianna could not hear what defendant yelled. After he passed the family's house, he resumed driving normally.

¶ 16 Gabriella testified that, at approximately 4:30 p.m. on June 15, 2013, she was on a couch in her living room, which had a bay window facing Canterbury Street. While she was watching television, she heard "noises," including "screaming, yelling, and singing," though she could not decipher the words. Gabriella looked out the window and observed defendant standing outside his orange vehicle, facing her house and "yelling, screaming, like a [*sic*] singing" for about one or two minutes. She stated that, as a result of his actions, she "was scared." She immediately called Tracey, who arrived at the house a few minutes later, followed shortly by the police.

¶ 17 Westchester police officer Jerry Dildine testified that, on June 15, 2013, he went to the Chavarin residence and spoke to Gabriella about the incident with defendant that had occurred approximately 30 minutes earlier. After their conversation, Dildine went to defendant's house and spoke to him. Defendant told Dildine that he had not left his house "all day" and denied

stopping in front of the Chavarin residence. Dildine asked defendant if he could check the temperature of his vehicle's motor, which defendant allowed. Dildine felt the hood of the vehicle, which was warm, and asked defendant to open the hood. Defendant did, and Dildine felt the engine, which was so "hot to the touch" that he would have burned his hand if he touched the engine for more than a second.

¶ 18 Approximately two weeks later, the family moved from their Canterbury Street residence because the library was selling the home. The family had considered buying the house, but felt that, due to the situation with defendant, who still was on the library board, it would be best to move.

¶ 19 Adrianna testified that the day the family was moving out of their residence, defendant sat on a chair on his front lawn facing the family's home and watched her carry boxes for approximately 15 minutes. Adrianna did not believe that defendant was doing anything but staring at their residence. Javier also testified that while the family was moving, defendant parked his vehicle at the end of their driveway, blocking it for one to two hours.

¶ 20 The family moved to a residence located at Pelham Street in Westchester, about a mile away from their former residence. The residence was owned by a family friend, and the Chavarins rented the house from that friend.

¶ 21 Adrianna testified that, in July 2013, while she was in a friend's vehicle on Mannheim Road, her boyfriend "nudged" her and asked her "isn't that [defendant]?" She looked to the adjacent lane and observed defendant in his orange vehicle with his arm hanging out of the window holding his cell phone. It appeared to Adrianna that he was taking photographs of her with his phone. Adrianna had not done anything to defendant to instigate his conduct. As a result

of defendant's conduct, Adrianna felt "[u]ncomfortable" and fearful because she did not know why he was taking photographs of her and did not know "what he was capable of doing."

¶ 22 Adrianna further testified that, during the evening of October 8, 2013, while she was on the front porch of their Pelham Street residence talking on her cell phone, she observed a flash from across the street. It was dark, but the street was illuminated by streetlights. When she looked in the direction of the flash, she observed defendant in his vehicle with his arm extended out taking either photographs or video of her. Adrianna immediately called the police and told them she knew it was defendant. When she said defendant's name "out loud," he drove away. She went inside her house and told Gabriella what happened. As a result of defendant's conduct, Adrianna felt "[e]ven worse." Gabriella testified that she was home when Adrianna came back inside the residence after the incident with defendant.

¶ 23 Westchester police officer Kristina Tountas testified that, at approximately 8 p.m. on October 8, 2013, she went to the Chavarin residence and spoke with Adrianna and Gabriella about the incident involving defendant. After their conversation, Tountas returned to the police station and reviewed prior police reports involving the Chavarins and defendant. At approximately 10 p.m., Tountas went to defendant's house and told him that he needed to come to the police station. Defendant denied being at anyone's house and willingly went to the police station, bringing with him a cell phone. Tountas inventoried the phone and placed him in a jail cell while she continued to investigate the matter. Tountas subsequently obtained a search warrant for the phone and gave the phone to a forensic investigator the following day. A day later, Tountas received two CDs containing the contents of defendant's phone. Upon reviewing the CDs, Tountas found a file containing a photograph taken on April 11, 2013, which she

identified at trial as People's Exhibit No. 1. She did not find a photograph taken on October 8, 2013.

¶ 24 Defendant testified that he owned his own handyman business and was a licensed home inspector. From 2004 continuing up to trial, he was on the board of the Westchester Public Library. At some point in 2010, defendant began acting as the property liaison between the library and the Chavarin family. The Chavarin family paid rent on the 15th of each month directly to the property manager, not defendant. By April 2011, the family was late in paying their rent in the amount of approximately $7,000, so defendant took the initiative to collect the rent. Defendant stated the Westchester Public Library board "sympathized" with the Chavarins' situation and agreed to forgive $2,500 of late rent if they made the remaining payment, which the Chavarins agreed to and subsequently paid.

¶ 25 At some point in time, defendant came to the Chavarin house to inspect work a contractor was performing after a flood had caused damage to the house. Defendant noticed the contractor was not complying with the village code and contacted the Westchester building commissioner, who issued a stop order to the work being performed on the house. Eventually, the house was fully repaired.

¶ 26 Defendant stated that he would drive by the Chavarin house at least four times per day: going to work, coming home for lunch, going back to work and coming back home. He often slowed down near their house in order to make a left-hand turn, but denied speeding up afterward. On April 11, 2013, defendant was driving to work when he saw Tracey driving on Mannheim Road. He acknowledged taking a photograph of her vehicle, but explained that he did so after she gave him "the finger." Defendant denied: driving by the Chavarin house on June 15, 2013, singing a song or trying to intimidate Gabriella; driving by their house and swearing at, or

giving the finger to, Javier; blocking the Chavarins' driveway while they were moving; watching Adrianna carry boxes; and driving by the Chavarin residence on October 8, 2013, and taking a photograph of Adrianna. Defendant stated that he only owned one cell phone.

¶ 27 Defendant presented multiple witnesses who testified to his reputation for being truthful.

¶ 28 The trial court found defendant guilty on all three counts of stalking. The court initially noted that the stalking statute does not require a defendant to make threats, but rather focused on whether his conduct would cause a reasonable person to fear for her safety. The court "believe[d]" all the members of the Chavarin family, finding their allegations often supported by the police being called immediately afterward. It also observed that the family caught up on their rent payments and eventually moved to a different residence, which, the court found, gave them no motive to lie about defendant's conduct.

¶ 29 Following defendant's unsuccessful motions for a new trial, the trial court sentenced him to concurrent terms of two years' probation and prohibited his contact with the Chavarin family. This timely appeal followed.

¶ 30 Defendant first contends that Counts 2 and 3 of his indictment were void because they alleged only one act committed by him directed at Tracey and Gabriella, respectively, while the stalking statute requires a "course of conduct," which is defined as two or more acts committed by a defendant. See 720 ILCS 5/12-7.3(a)(1), (c)(1) (West 2012). He acknowledges the trial court allowed the State to amend Counts 2 and 3 of his indictment before trial to include additional acts committed by him. He asserts, however, that these amendments broadened and substantively changed the indictment and thus were impermissible except through amendment by the grand jury itself. Defendant does not contest the court's decision to allow the State to amend the date on which his conduct began in all three counts.

¶ 31 The State responds that the amendments to the indictment were for formal defects and thus permissible at any time. It further argues that, because it discussed the amendments with defense counsel prior to seeking leave to amend from the trial court and counsel affirmatively stated he had no objection to the amendments, defendant has not only forfeited but also waived this claim of error on appeal. Defendant replies that, because the amendments were substantive, his claim of error concerning them cannot be waived. For the reasons set forth below, we find the trial court did not err in allowing the amendments, and we therefore need not decide whether defendant has preserved his claim of error for review. See *People v. Jackson*, 2016 IL App (1st) 133823, ¶ 35.

¶ 32 Section 111-5 of the Code of Criminal Procedure of 1963 allows the State, upon its motion, to amend an indictment "at any time because of formal defects," such as any "miswriting, misspelling or grammatical error," the "presence of any unnecessary allegation," or the "use of alternative or disjunctive allegations as to the acts, means, intents or results charged." 725 ILCS 5/111-5 (West 2012). Section 111-5's list of formal defects is not exclusive. *People v. Benitez*, 169 Ill. 2d 245, 255 (1996); see, *e.g.*, *People v. Jones*, 2012 IL App (2d) 110346, ¶¶ 8-10, 51-65 (finding the State formally amended the indictment on the day of trial when it changed the name of the victim of an aggravated battery from one police officer to another police officer); *People v. Ross*, 395 Ill. App. 3d 660, 667-73 (2009) (finding the State formally amended the indictment during trial when it changed both the victim and the manner in which the defendant committed a criminal sexual assault); *People v. Nathan*, 282 Ill. App. 3d 608, 609-11 (1996) (finding the State formally amended the indictment during trial when it changed the manner in which the defendant committed an aggravated battery). Amending formal defects in an indictment "is warranted especially where there is no resulting surprise or prejudice to the

defendant or where the record clearly shows that he was otherwise aware of the charge against him." *Ross*, 395 Ill. App. 3d at 667.

¶ 33 Amendments of formal defects are different than substantive changes to an indictment. *Id.* at 668. A substantive amendment "alters an essential element of the offense for which the accused was indicted." *People v. Kelly*, 299 Ill. App. 3d 222, 227 (1998); see, *e.g.*, *People v. Patterson*, 267 Ill. App. 3d 933, 938-39 (1994) (finding the State substantively amended the indictment prior to trial when it changed the quantity of a controlled substance that the defendant allegedly possessed with the intent to deliver from more than 15 but less than 100 grams to more than 400 but less than 900 grams); *People v. Zajac*, 244 Ill. App. 3d 42, 43 (1991) (finding the State substantively amended a criminal complaint after a jury had been sworn in but before any witnesses testified when it changed the subsection of the driving under the influence statute the defendant allegedly violated); *People v. Johnson*, 43 Ill. App. 3d 559, 561 (1976) (finding the State substantively amended a criminal complaint for unlawful use of a weapon following the State's case when it added that the defendant's firearm was " 'loaded,' " where prior to the amendment, the complaint "failed to allege any offense"). If the amendment is substantive, the State must return to the grand jury for a further indictment or file an information followed by a preliminary hearing. *Kelly*, 299 Ill. App. 3d at 227. "Any attempt to broaden the scope of the indictment, alter or change the offense charged, or change a material element of the indictment requires return of the indictment to the grand jury." *People v. Griggs*, 152 Ill. 2d 1, 32 (1992). We review the trial court's decision to allow the amendments for an abuse of discretion. *Ross*, 395 Ill. App. 3d at 668.

¶ 34 We first must determine whether the State's amendments to Counts 2 and 3 of the indictment were substantive changes or amendments of formal defects, which requires us to

review the essential elements of the offense. See *Kelly*, 299 Ill. App. 3d at 227. Counts 2 and 3 charged defendant with stalking under subsection (a)(1) of the stalking statute. 720 ILCS 5/12-7.3(a)(1) (West 2012). Under that subsection, the defendant commits stalking when he knowingly engages in a "course of conduct" directed at a specific person, and he knows or should know that this course of conduct would cause a reasonable person to fear for her safety or the safety of a third person. *Id.* The statute defines "course of conduct" as "2 or more acts," such as following, surveiling or threatening another person. 720 ILCS 5/12-7.3(c)(1) (West 2012). However, it is the fact that the defendant committed the course of conduct that is an element of the offense of stalking, not the specific acts that constitute the course of conduct.

¶ 35 The criminal sexual assault statute is similar in this regard. Under section 11-1.20 of the Code (720 ILCS 5/11-1.20 (West 2012)), the defendant commits criminal sexual assault when he "commits an act of sexual penetration" when certain enumerated factors are present. Sexual penetration is defined by the Code as "any contact, however slight" occurring under specified circumstances. 720 ILCS 5/11-0.1 (West 2012). However, the specific conduct that constitutes the penetration is not an element of the offense of criminal sexual assault. See *People v. Carter*, 244 Ill. App. 3d 792, 803-04 (1993) ("Illinois case law provides that the type of sexual penetration is not an element of the offense, and its inclusion in the indictment is merely surplusage."); see also *Ross*, 395 Ill. App. 3d at 670 (same).

¶ 36 Under subsection (a)(1) of the stalking statute, the defendant commits stalking when he "knowingly engages in a course of conduct directed at a specific person." 720 ILCS 5/12-7.3(a)(1) (West 2012). Course of conduct is separately defined. 720 ILCS 5/12-7.3(c)(1) (West 2012). Just as in the criminal sexual assault statute where sexual penetration is an element of the

offense, not the manner of sexual penetration, course of conduct is an element of the offense of stalking, not the acts that constitute the course of conduct.

¶ 37 In light of the above, the State's amendments did not change an essential element of the offense, but rather added additional acts making up an essential element. The fact that the defendant engaged in a course of conduct directed at Tracey and Gabriella did not change, only the manner in which he committed the offenses. See *Nathan*, 282 Ill. App. 3d at 611 (finding the State formally amended the indictment during trial when it changed the manner in which the defendant committed an aggravated battery because "[t]he particular details of the means defendant allegedly used do not constitute essential elements of the offense of aggravated battery"). Therefore, the State's amendments to Counts 2 and 3 of the indictment were formal, not substantive.

¶ 38 Given the State's amendments were formal, we next look at whether there was any resulting surprise or prejudice to defendant or if the record clearly shows that he was otherwise aware of the charges against him. See *Ross*, 395 Ill. App. 3d at 667. We find no prejudice or surprise. The charges against him were not changed or broadened. Further, prior to amending Counts 2 and 3 of the indictment, the State informed the trial court that it had discussed the amendments with defense counsel, who affirmatively stated he had no objection to the amendments. Defendant therefore cannot claim surprise or prejudice from the amendments. See *People v. Louisville*, 241 Ill. App. 3d 772, 778 (1992) (finding a defendant could not "now claim unfair surprise and prejudice" when an exhibit went to the jury room where it had been tendered to defense counsel in court, counsel examined the exhibit and stated he had no objection to the exhibit's admission into evidence). Accordingly, the trial court did not abuse its discretion in allowing the State to amend Counts 2 and 3 of the indictment.

¶ 39 Given our holding that the trial court properly allowed the State to amend Counts 2 and 3 of the indictment because a course of conduct engaged in by defendant was an essential element of the offense of stalking, not the acts constituting the course of conduct, we need not address defendant's additional contention that there was an impermissible variance between Counts 2 and 3 of the indictment and the evidence at trial.

¶ 40 Defendant next contends that the State presented insufficient evidence to prove he committed stalking on any of the three counts.

¶ 41 When a defendant challenges his convictions based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crimes proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. While we must carefully examine the evidence before us, credibility issues, resolution of conflicting or inconsistent evidence, weighing the evidence and making reasonable inferences from the evidence are all reserved for the trier of fact. *Brown*, 2013 IL 114196, ¶ 48. We will not overturn convictions unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 42 To sustain a conviction under subsection (a)(1) of the stalking statute, the State must prove that the defendant "knowingly engage[d] in a course of conduct directed at a specific person," and he knew or should have known that this course of conduct would cause a reasonable person to fear for her safety or the safety of a third person. 720 ILCS 5/12-7.3(a)(1) (West 2012). In turn, a course of conduct is defined as "2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method,

device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, [or] engages in other non-consensual contact." 720 ILCS 5/12-7.3(c)(1) (West 2012). "Non-consensual contact" includes "any contact with the victim that is initiated or continued without the victim's consent, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim." 720 ILCS 5/12-7.3(c)(6) (West 2012).

¶ 43 Defendant first argues the evidence was insufficient on Count 1 because the trial court unreasonably inferred that he took photographs of Adrianna while they were driving in adjacent vehicles where there was no evidence that he knew Adrianna was in the adjacent vehicle and a search of his cell phone failed to uncover any photographs of the alleged incident. Defendant asserts that, because the State failed to prove one of the two acts required to constitute a course of conduct, his conviction on Count 1 must be overturned.

¶ 44 On an unspecified date in July 2013, Adrianna was driving down Mannheim Road when she observed defendant in his vehicle appearing to take photographs of her. Defendant asserts that there were "two reasonable interpretations of this event: (1) [Defendant] was photographing Adrianna Chavarin; or (2) [defendant] just happened to be driving down the same road with his arm hanging out the window." As defendant observes, the evidence of this incident was capable of producing contradictory inferences. However, "where the evidence presented is capable of producing conflicting inferences, the matter is best left to the trier of fact for proper resolution." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 45 Although we must give a high level of deference to a trial court's findings of fact, we "may not allow unreasonable inferences." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). In

finding defendant guilty, the trial court expressly stated that defendant was not innocuously driving alongside Adrianna with his arm hanging out of the window. We cannot find the court's inference from the evidence in this regard unreasonable. The mere fact there was no direct evidence presented that defendant knew Adrianna was in the adjacent vehicle does not mean the inference was improper. See *People v. Nakajima*, 294 Ill. App. 3d 809, 821 (1998) ("The accused's knowledge may be inferred from the facts and circumstances of the case [citation], and the accused need not admit he possesses knowledge for the trier of fact to draw such a conclusion.") Defendant's knowledge could be inferred from Adrianna's testimony that he appeared to be taking photographs of her.

¶ 46 Additionally, defendant's cell phone was seized by the police on October 8, 2013, whereas this photography of Adrianna occurred in July 2013, at least two months earlier. In light of her credible testimony, the absence of corroborating photographs does not render the court's finding unreasonable. See *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 (stating that, where the trial court found a witness' identification and testimony to be credible, the lack of corroborating physical evidence does "not raise a reasonable doubt as to [the defendant's] guilt").

¶ 47 Given the trial court's reasonable inference, this act, combined with defendant's acts in the summer of 2013 of watching Adrianna move boxes and driving slowly past her house and yelling things, and his October 8, 2013, photographing of her while she stood on her porch, when viewed in the light most favorable to the State, sufficiently proved that defendant committed at least two acts directed at her necessary to constitute a course of conduct. Beyond claiming he did not know Adrianna was in the vehicle when he allegedly photographed her, defendant does not challenge that this course of conduct would have caused a reasonable person to fear for her

safety or the safety of a third person. Consequently, defendant's conviction on Count 1 must be affirmed.

¶ 48 Defendant next argues the evidence was insufficient on Counts 2 and 3 because the State failed to prove he engaged in a course of conduct directed at Tracey (Count 2) and Gabriella (Count 3). In particular, defendant asserts the evidence only showed that he committed one act specifically directed at Tracey and one act specifically directed at Gabriella, yet the stalking statute requires two or more acts directed at a specific person to constitute a course of conduct. See 720 ILCS 5/12-7.3(a), (c)(1) (West 2012).

¶ 49 Concerning Count 2, defendant does not contest that he committed one act directed at Tracey when he took a photograph of her on Mannheim Road while they were in adjacent vehicles. The State sufficiently proved defendant committed at least a second act directed at Tracey based on her testimony that, beginning in November 2010, he would stop in front of her house and stare at it approximately every two months. It further proved he committed additional acts directed at Tracey based on Adrianna's testimony that, in June 2013, a few times per week, defendant would drive by the house, nearly stopping, and yell. This evidence, when viewed in the light most favorable to the State, showed defendant "observ[ed]," "surveil[ed]" or engaged in "non-consensual contact" with Tracey. 720 ILCS 5/12-7.3(c)(1) (West 2012); see *People v. Krawiec*, 262 Ill. App. 3d 152, 161 (1994) (finding that surveillance encompasses "the [defendant's] act of remaining in the vicinity of the would-be victim's house" regardless of whether that person is home).

¶ 50 Although these acts could more aptly be stated as directed at the entire Chavarin family, Tracey is part of the family and merely because defendant chose not to single out one member of the family during these stalking incidents does not mean his stalking was not directed at a

specific person. Therefore, the State sufficiently proved that defendant knowingly engaged in a course of conduct directed at Tracey. Consequently, as defendant does not challenge that his course of conduct would have caused a reasonable person to fear for her safety or the safety of a third person, defendant's conviction on Count 2 must be affirmed.

¶ 51 Concerning Count 3, defendant does not contest that he committed one act directed at Gabriella when, on June 15, 2013, he appeared outside her house and began singing or yelling. The State sufficiently proved defendant committed at least a second act directed at Gabriella based on Tracey's testimony that defendant would stare at the family's house every two months and the fact that Gabriella resided there. It further proved he committed additional acts directed at Gabriella based on Adrianna's testimony that, in June 2013, a few times per week, defendant would drive by the house, nearly stopping, and yell. This evidence, when viewed in the light most favorable to the State, showed that defendant "observ[ed]," "surveil[ed]" or engaged in "non-consensual contact" with Gabriella. 720 ILCS 5/12-7.3(c)(1) (West 2012); see *Krawiec*, 262 Ill. App. 3d at 161 (finding a defendant can surveil another person regardless of whether that person is home). Therefore, the State sufficiently proved that defendant knowingly engaged in a course of conduct directed at Gabriella. Consequently, as defendant does not challenge that his course of conduct would have caused a reasonable person to fear for her safety or the safety of a third person, defendant's conviction on Count 3 must be affirmed.

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 53 Affirmed.