

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JEFFREY, JR.,

Defendant-Appellant.

UNPUBLISHED

April 15, 1997

No. 194196

St. Clair Circuit Court

LC No. 94-000357

Before: Saad, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals by right from his jury trial finding of responsibility for criminal stalking, MCL 750.411h; MSA 28.643(8), for which defendant was made a temporary ward of the court. Defendant was a high school student who allegedly inappropriately touched and spoke to a female classmate. We affirm.

I

Defendant first contends that the trial court erred when it denied his motion for a directed verdict. We disagree. Criminal stalking is defined as:

[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); MSA 28.643(8)(1)(d).]

Defendant concedes that the evidence presented at trial tended to show that there were “unconsented contacts” between him and the complainant, but argues that those contacts both (1) did not cause the complainant to suffer emotional distress, i.e., “significant mental suffering or distress” pursuant to § 411h(1)(b); and (2) were not such that would have caused a “reasonable individual” to suffer emotional distress. However, with regard to both the subjective and objective requirements of emotional distress, a review of the record reveals that there was sufficient testimony for a rational jury to find such beyond a

reasonable doubt. Indeed, we particularly note an alleged incident, in which defendant offered the complainant his book cover and propositioned her in front of the whole classroom, as being more than enough to cause a reasonable individual significant mental suffering. Furthermore, the complainant herself testified regarding the subjective effects defendant's behavior had on her. Considering this evidence in the light most favorable to the prosecution at the time of defendant's motion, we find that a rational factfinder could have found the essential elements of criminal stalking proven beyond a reasonable doubt, and the trial court therefore properly denied a directed verdict for defendant. *People v Mehall*, 454 Mich 1, 6; ___ NW2d ___ (1997). Moreover, given our conclusion that there was sufficient evidence presented at trial to survive a motion for a directed verdict pursuant to the proper review standard, we cannot say that any apparent misapplication of the proper review standard by the trial court was prejudicial to defendant, and such was therefore harmless error. *People v Mateo*, 453 Mich 203, 215-216; 551 NW2d 891 (1996).

II

Defendant next contends that the trial court erred when it allowed the late endorsement of a witness by the prosecution without good cause shown. We agree; however, we find that such error was harmless.

MCL 767.40a(4); MSA 28.980(1)(4) provides that a witness may be added by the prosecution "upon leave of the court *and for good cause shown*" (emphasis added). A review of the record reveals that during the prosecution's case in chief, the prosecution requested the late indorsement of the complainant's mother as a witness solely because the complainant's direct testimony did not proceed as well as the prosecution had hoped. We agree with defendant that such was not good cause for late indorsement. It is clear from the record that the prosecution was aware prior to trial that the complainant's mother was available to testify (indeed, the complainant's mother was present throughout the proceedings), but presumably assumed that the complainant herself would testify sufficiently. That such sufficient testimony supposedly did not materialize cannot be "good cause" shown pursuant to § 40a(4). As such, we find that the trial court's allowance of the late indorsement of the complainant's mother as a witness was an abuse of discretion. *People v Lino (After Remand)*, 213 Mich App 89, 92; 539 NW2d 545 (1995).

We further note, however, that defendant failed to request a continuance in order to interview the complainant's mother, and, as such, defendant cannot claim that he was prejudiced by the late indorsement. See, e.g., *People v Lobaito*, 133 Mich App 547, 557; 351 NW2d 233 (1984). The allowance of the late indorsement was therefore harmless error. *Mateo*, *supra* at 215-216.

III

Finally, defendant contends that the trial court erred when it denied his motion for a mistrial owing to allegedly improper prosecutorial examination. We disagree.

We initially note that, while defendant ostensibly preserved this issue by means of his mistrial motion, he failed to contemporaneously object to the allegedly improper prosecutorial cross-

examination forming the basis of that motion. As such, appellate review of such is nonetheless precluded unless any prejudicial effect could not have been eliminated by a curative instruction. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). Further, a review of the record reveals that any prejudicial effect arising from either of the two alleged instances of improper prosecutorial cross-examination could easily have been addressed by a curative instruction. As such, we cannot say that the trial court abused its discretion when it denied defendant's motion for a mistrial on that basis. *People v Cunningham*, 215 Mich App 652, 654; 546 NW2d 715 (1996).

Affirmed.

/s/ Henry W. Saad

/s/ Janet T. Neff

/s/ Kathleen Jansen