

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHARON MCCORMICK,

Defendant-Appellant.

UNPUBLISHED

April 18, 1997

No. 181007

Recorders' Court

LC No. 94-002066

Before: Young, P. J., and Gribbs and S. J. Latreille,* JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of aggravated stalking, MCL 750.411i; MSA 28.643(9). Defendant was sentenced to five years' probation. We affirm.

Defendant's first issue on appeal is that the trial court erred by allowing the prosecution to amend the information on the morning of the first day of trial. We disagree.

Pursuant to MCL 767.45(1); MSA 28.985(1), an indictment or information must contain the following: 1) the nature of the offense stated in language which will fairly apprise the accused and the court of the offense charged; and 2) the time of the offense as near as may be. *People v Weathersby*, 204 Mich App 98, 101; 514 NW2d 493 (1994). The indictment should notify the defendant of the nature and character of the crime with which he is charged so as to enable him to prepare his defense and to permit the court to pronounce judgment according to the right of the case. *Id.* (citing *People v Adams*, 389 Mich 222, 243; 205 NW2d 415 (1973)). A trial court may, pursuant to MCL 767.76; MSA 28.1016, amend the information at any time before, during or after trial in order to cure a variance between the information and the proofs as long as the accused is not prejudiced by the amendment and the amendment does not charge a new crime. *People v Stricklin*, 162 Mich App 623, 633; 413 NW2d 457 (1987). Prejudice occurs when the defendant does not admit guilt and is not given a chance to defend against the crime. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

We hold that defendant was not prejudiced by the trial court's allowing the prosecution to amend the information to encompass events occurring before October 28, 1993. *Stricklin, supra* at 633; *People v Hardiman*, 132 Mich App 382, 386; 347 NW2d 460 (1984). The original information, issued March 2, 1994, charged defendant with aggravated stalking and referred to "repeated or continuous harassment" of complainant. The record shows that the prosecutor and defense counsel discussed evidence that reflected a pattern of such harassment reaching from July of 1993 to October of 1993, and that defense counsel was aware, before the morning of the first day of trial, that complainant's statements to police and other evidence covered acts of harassment on dates before October 28, 1993. Defendant was thus aware of the nature and character of her crime and was able to prepare a defense. *Weathersby, supra* at 101. Changing the date of the information also brought the information into harmony with the proofs. *Stricklin, supra* at 633. Accordingly, we decline to reverse the trial court. *Hardiman, supra* at 386.

We decline to consider defendant's second issue on appeal, which is a challenge to the constitutional validity of the stalking statutes, MCL 750.411h; MSA 28.643(8), and MCL 750.411i; MSA 28.643(9). This Court thoroughly considered the vagueness, overbreadth, due process violation and statutory presumption questions presented by defendant in *People v White*, 212 Mich App 298; 536 NW2d 876 (1995), and *People v Ballantyne*, 212 Mich App 628; 538 NW2d 106 (1995), and found them to be without merit. Moreover defendant's telephone calls, sitting outside of complainant's home, and threats to complainant to fall squarely within the statutes.

Finally, the jury was clearly instructed in this case that the defendant is presumed innocent throughout the trial and that the burden of proof on every element of stalking remained with the prosecution. *White, supra* at 314-315. Defendant is not entitled to relief.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Roman S. Gibbs

/s/ Stanley J. Latreille