

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRY JEAN GIBSON,

Defendant-Appellant.

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UNPUBLISHED

October 2, 1998

No. 199299

Calhoun Circuit Court

LC No. 96-000283 FH

Before: Whitbeck, P.J., and McDonald and T. G. Hicks\*, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for aggravated stalking, MCL 750.411i; MSA 28.643(9), entered after a jury trial. We affirm.

On appeal defendant argues that his conviction for aggravated stalking violates double jeopardy principles where he was previously convicted of domestic violence for the antecedent acts that led to the stalking conviction. This Court rejected a similar argument in *People v Coones*, 216 Mich App 721; 550 NW2d 600 (1996). The power to define crime and fix punishment is wholly legislative. The double jeopardy clause is not a limitation on the Legislature's power to define crime and authorize penalties. *Id.* at 727 (Bandstra, J.), 730 (O'Connell, J., concurring). Cumulative punishment of the same conduct does not necessarily violate the prohibition against double jeopardy in the federal or state system. *Id.* Where the aggravated stalking statute expressly provides for penalties in addition to any imposed for any other criminal offense arising from the same conduct, the Legislature clearly intended multiple punishment. *Id.* at 728 (Bandstra, J.), 730 (O'Connell, J., concurring).

Defendant also argues that the trial court erred in denying his motion for mistrial and for new trial, based on the alleged premature deliberation by a juror. Defendant asserts that a juror's request for the definition of the elements of aggravated stalking prior to closing argument is indicative of impermissible deliberation.

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

Absent evidence that the jurors discussed the case or that defendant was otherwise prejudiced, a defendant's right to an impartial trial is not compromised by questions submitted by the jury before closing arguments. *People v Rutherford*, 208 Mich App 198, 203; 526 NW2d 620 (1994). An inference that the jury had begun deliberations cannot be drawn solely from a juror asking the trial court a question. *People v White*, 144 Mich App 698, 701; 376 NW2d 184 (1985). Where defendant only submitted evidence that one juror had submitted a question prior to the close of proofs, he has failed to present sufficient evidence to show that the jury engaged in premature deliberations. The trial court did not abuse its discretion in denying a mistrial or a new trial. *Rutherford, supra* at 202.

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks