

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK ROBERT STRELAU,

Defendant-Appellant.

UNPUBLISHED

August 1, 1997

No. 186496

Oakland Circuit Court

LC No. 94-136349-FH

Before: Corrigan, C.J., and Michael J. Kelly and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aggravated stalking, MCL 750.411i; MSA 28.643(9), and was sentenced to three to five years' imprisonment. This sentence was to be consecutive to sentences for second-degree criminal sexual conduct and felonious assault arising from a separate incident. Defendant appeals as of right, and we affirm.

Defendant's first argument challenges the constitutionality of the aggravated stalking statute. Defendant claims that the definition of stalking is constitutionally overbroad as applied to him because the offense lacks a specific intent requirement and, consequently, he was precluded from raising a diminished capacity defense. Defendant's claim is unpreserved because, although he challenged the constitutionality of the stalking statute in the trial court, the attack was based upon different grounds than those advanced on appeal. An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). We decline to review defendant's claim because we do not deem it to raise an important constitutional question. See *People v Heim*, 206 Mich App 439, 441; 522 NW2d 675 (1994). This Court has already addressed the constitutionality of the stalking statute based upon overbreadth and vagueness in *People v White*, 212 Mich App 298; 536 NW2d 876 (1995), and found the statute constitutional. Further, we believe defendant's reliance on *People v Taravella*, 133 Mich App 515; 350 NW2d 780 (1984) is misplaced. *Taravella* cannot be read to hold that the absence of a specific intent element to the stalking statute renders it unconstitutionally overbroad.

Defendant next argues that the trial court abused its discretion in denying his motion for the appointment of and payment for a forensic expert on the issue of his diminished capacity and competency to stand trial. We disagree. A trial court's decision whether to appoint an expert witness, and pay the fees, is reviewed for an abuse of discretion. *People v Jacobsen*, 205 Mich App 302, 304; 517 NW2d 323 (1994), rev'd on other grounds 448 Mich 639; 532 NW2d 838 (1995).

Here, defendant's claim that appointment of a forensic expert was necessary to develop his diminished capacity defense is without merit because aggravated stalking is a general intent crime for which diminished capacity is not a viable defense. See *People v Biggs*, 202 Mich App 450, 454; 509 NW2d 803 (1993). Furthermore, we find no abuse in the denial of an appointment of an expert to reexamine defendant's competency to stand trial. Defendant claims that because he was deprived of sleep for four days prior to his competency examination he should have been reexamined prior to trial. Defendant's argument is illogical. Sleep deprivation was more likely to alter the results of his competency examination toward a finding of incompetency, rather than competency. From our review, we find no abuse of discretion in the denial of defendant's request to appoint a forensic expert to examine defendant on this basis.

Next, defendant argues that the trial court abused its discretion in refusing to subpoena witnesses to testify regarding his mental state. This Court reviews the trial court's decision concerning compulsory process for an abuse of discretion. *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996). Pursuant to MCL 775.15; MSA 28.1253, a defendant is entitled to subpoena a material witness if he cannot safely proceed to trial without the testimony of the witness. We find that the trial court did not abuse its discretion in denying defendant's request to subpoena these witnesses because the witnesses were not material. State of mind was not an issue at trial. Accordingly, defendant was not denied his right to compulsory process.

Defendant further argues that the trial court abused its discretion because it allowed the prosecution during opening arguments to read from a letter that defendant wrote the complainant, but denied defendant the same opportunity. Defendant has not preserved this issue for appellate review because he failed to object to the prosecution's opening statement. We decline to address this claim because we believe that a miscarriage of justice will not result from our failure to review the issue. *People v Mooney*, 216 Mich App 367, 378; 549 NW2d 65 (1996). There is no reason to believe that this issue had any impact on the outcome of the case.

Defendant also argues that the trial court limited his ability to cross-examine the complainant. Whether a trial court has properly limited cross-examination is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). Although we agree that the trial court erred by restricting the cross-examination of the complainant, we believe the error was harmless. Violations of the right to cross-examination are subject to harmless error analysis. *People v Mack*, 218 Mich App 359, 364; 554 NW2d 324 (1996).

Here, in light of the overwhelming evidence of defendant's guilt presented at trial, the limitation placed on defendant was harmless. Defendant admitted writing the letters in violation of the court order prohibiting such conduct. Furthermore, defendant was able to express his deep feelings for the complainant through the portions of the letter that she did read and his own comments throughout trial. Accordingly, reversal on this basis is not warranted.

Similarly, defendant claims that the trial court violated his right to confront the complainant. Specifically, defendant asserts that the trial court would not let defendant question the complainant regarding her first ex-husband or whether she asked to have the earlier charges dropped. We agree with the trial court that these questions were not relevant to the aggravated stalking charge, nor did the testimony demonstrate a bias on the part of the complainant, since defendant admitted writing the letters in violation of the judgment of sentence. MRE 401; *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). Because the testimony was irrelevant, the trial court properly precluded the questioning.

Defendant next claims that the trial court abused its discretion in denying his motion for a new trial. We disagree. We review a trial court's denial of a motion for a new trial for an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993).

Defendant's first claim in this regard is that the letters from him to the victim were insufficient to cause the victim to be harassed or stalked as defined by the aggravated stalking statute. Here, the evidence showed, and defendant admitted, that he sent the letters in violation of the court's order. Furthermore, the complainant testified that the letters were very upsetting, that they caused her emotional distress, and that she fears for the safety of her child after defendant is released from jail. Moreover, a reasonable person could find the letters harassing and intimidating. They contained statements such as "I have the ability to hurt you, but I would not." One letter conveyed a tempering statement that "the last thing I would ever do is hurt you." However, we believe that the tempering statement is overshadowed by the underlying threats presented in the letters. Based upon our reading of the letters, we find that a reasonable person would feel harassed and stalked by their overall content.

Defendant also argues that the trial court should have granted his motion for a new trial because the complainant was not credible. A judge may grant a new trial after finding the testimony of witnesses for the prevailing party not to be credible. *Herbert, supra* at 477. This exercise of judicial power is to be undertaken with great caution, mindful of the special role accorded jurors under our constitutional system of justice. *Id.* In light of this standard we find no abuse of discretion by the trial court in denying defendant's motion for new trial based on this claim. The contact that the victim had with defendant prior to trial in this case does not establish that the victim's testimony was not worthy of belief.

Regarding sentencing, we find without merit defendant's claim that the trial court erred by denying defendant an opportunity to object to an inaccuracy in the presentence report concerning his prior record. The record shows that defendant was given ample opportunity to address inaccuracies in the report and that he failed to raise this issue. Finally, we have reviewed defendant's assertion that his

sentence violates the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We note that the guidelines do not apply to aggravated stalking. Based on our review, we find defendant's sentence to be proportionate considering the offense and offender, and we find no abuse of discretion by the trial court in imposing this sentence. *Id.*

Affirmed.

/s/ Maura D. Corrigan

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Michael J. Kelly