

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND EUGENE HERRANDO,

Defendant-Appellant.

UNPUBLISHED
November 9, 2006

No. 266424
Emmet Circuit Court
LC No. 05-002388-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of aggravated stalking, MCL 750.411i. The trial court sentenced defendant to serve two years' probation, the first two months to be spent in jail, subject to an additional nine months of jail confinement at the court's discretion. Defendant appeals as of right. We affirm.

The complaining witness testified that she met defendant at the home of some friends, but never became romantically involved with him. Citing threatening behavior on defendant's part, she obtained three personal protection orders against him. At trial, the complainant detailed a litany of instances of such conduct, including public confrontations, vulgar and threatening speech, persistent late-night phone calls, following her children, repeated instances of driving by her house, vehicular assault, and disseminating her personal information.

On appeal, defendant challenges the sufficiency of the evidence, the trial court's decision to deny his motion for a mistrial, and the court's decision to limit his cross-examination of the complainant.

I. Sufficiency of the Evidence

When reviewing the sufficiency of evidence, we must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Review is de novo. *Id.*

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 750.411i(1)(e). Defendant’s cursory argument for this issue consists of noting that definition, and asserting, without elaboration, that in this case a reasonable jury could not have concluded that the complainant’s response to the conduct attributed to defendant could have satisfied that definition.

But taking at face value the complainant’s litany of defendant’s physical and verbal encroachments upon her, we conclude that the complainant would have to have had excessive cynicism, plus superhuman emotional resilience, to have felt other than “frightened, intimidated, threatened, harassed, or molested” as the result. Defendant’s sufficiency challenge must fail.

II. Motion for Mistrial

We review a lower court’s decision on a motion for a mistrial for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). “A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial.” *Id.* (citations omitted).

In this case, the prosecutor asked the complainant’s mother, “Did the defendant ever say anything or give anything to you that he said was directed to [the complainant]?” The witness replied, “He told me that he had paid someone \$200 to have her killed.” Defense counsel immediately objected, and requested a mistrial. The trial court sustained the objection, but denied the motion. The court instead provided a curative instruction, which included the following:

[Defendant’s] attorney has said that he denies making that [statement]. He could call witnesses perhaps to respond to that. It would be simply unfair to even consider that in any way, shape or form because it’s clearly a disputed fact, isn’t supposed to be part of this case, it’s not what this case is about and you must disregard that

A court abuses its discretion when it reaches a result falling outside a “principled range of outcomes.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). See also *Radeljak v Daimlerchrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006). The outcome in this instance fell within a principled range. Not every instance of mention before a jury of some inappropriate subject matter warrants a mistrial. Specifically, “an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial.” *Haywood, supra*.

Moreover, the trial court’s curative instruction was sufficiently thorough and convincing that it should have cured any prejudice. “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

For these reasons, we reject this claim of error.

III. Limitation on Cross-Examination

Defense counsel wished to impeach the complainant by asking about her having stated, under oath, in a proceeding in connection with one of the PPOs, that defendant had in fact raped her, but that she had not reported it, explaining that she had suffered a rape while in college, and

did not wish to endure another “trial.” Counsel wished to pursue his belief that no such trial ever took place. The prosecutor made an offer of proof to the effect that there had been no earlier trial. The parties agreed in advance that no accusation of rape would be part of the prosecutor’s proofs in this trial. The trial court disallowed the cross-examination, on the ground that it would go into areas not properly before the jury.

We review a trial court’s evidentiary decisions for an abuse of discretion. *People v Martzke*, 251 Mich App 282, 286; 651 NW2d 490 (2002). But cross-examination of adverse witnesses at trial is a party’s right, not a privilege left entirely to the discretion of the court. See *People v Hackett*, 421 Mich 338, 347; 365 NW2d 120 (1984). Witness credibility is always at issue, and may be attacked on cross-examination. MRE 611(b).

A trial court has the authority and duty to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.” MRE 611(a). Further, as the trial court noted in this case, MRE 611(b) allows a judge to “limit cross-examination with respect to matters not testified to on direct examination.” MRE 403 authorizes a court to exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Constitutional guarantees of confrontation and due process rights stop short of allowing a criminal defendant an unlimited prerogative to cross-examine on any subject. See *Hackett, supra*. Accordingly, cross-examination may be denied in connection with collateral matters bearing only on general credibility. *Id.* at 348.

Because the possibility that defendant had in fact raped the complainant was not before the jury, and because whether the complainant had endured an earlier rape trial was entirely unrelated to the facts establishing the elements of the instant offense, the cross-examination defense counsel wished to conduct would have involved matters beyond what came out on direct examination. Because MRE 611(b) authorizes a court to limit cross-examination to matters stemming from direct examination, the trial court did not abuse its discretion in exercising that prerogative in this instance. See also *Hackett, supra*.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio