

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MASTELLA L. JACKSON,

Defendant-Appellant.

---

UNPUBLISHED  
February 21, 2003

No. 238174  
Wayne Circuit Court  
LC No. 01-002171

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right her conviction of stalking, MCL 750.411h, entered after a bench trial.<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally charged with aggravated stalking, MCL 750.411i, and aggravated assault, MCL 750.81a, based on a single offense date of January 30, 2001. After a preliminary exam, the aggravated assault charge was reduced to assault and battery. Prior to trial, the prosecution moved to amend the information to allege the period of July 1999 through January 30, 2001. Defendant objected based on lack of notice, and contended that she was prepared to defend regarding conduct alleged to have occurred on January 30, 2001. The trial court granted the motion, noting that by its nature a charge of aggravated stalking involved conduct that allegedly occurred over a period of time, so the defense would be on notice that a continuous course of conduct had been charged.

Complainant testified that on July 7, 1999, defendant stabbed her after an argument, although she admitted that defendant was found not guilty of the charges brought in connection with the stabbing. Defendant used that testimony to attempt to show that the complainant bore a grudge against defendant because she was unhappy with the verdict. The complainant testified that over the ensuing months defendant confronted her both in person and by telephone and threatened her, and that defendant's actions frightened her. Complainant stated that in March 2000 she was pregnant, and that in response to another incident with defendant she secured a

---

<sup>1</sup> Defendant was also convicted of assault and battery, MCL 750.81, but raises no issues with respect to that conviction.

personal protection order (PPO) against defendant. Complainant asserted that on January 30, 2001, she was standing in front of her home when defendant approached her and threatened to kill her. Complainant stated that defendant struck her, and that she and defendant engaged in a physical altercation.

Defendant testified and acknowledged that she and complainant had had a series of confrontations. Defendant asserted that in July 1999 and on January 30, 2001 complainant was the aggressor in the incidents.

The trial court found defendant guilty of the misdemeanor offense of stalking rather than the felony offense of aggravated stalking, and of assault and battery. The trial court found that complainant was a credible witness and that her testimony regarding the alleged events was basically consistent, and that defendant's testimony regarding the same events was not plausible. The trial court sentenced defendant to concurrent terms of eighteen months' probation.

An information may be amended before, during, or after trial to cure a defect, imperfection, or omission in form or substance, including a variation between the information and the proofs, as long as the defendant is not prejudiced by the amendment and the amendment does not charge a new crime. MCL 767.76; MCR 6.112(H); *People v Jones*, 252 Mich App 1, 4-5; 650 NW2d 717 (2002). A trial court's ruling on a motion to amend the information will not be reversed on appeal unless the defendant was prejudiced in the presentation of his defense. *People v Hardiman*, 132 Mich App 382, 386; 347 NW2d 460 (1984).

"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); MCL 750.411i(1)(e). A "course of conduct" is defined as "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a); MCL 750.411i(1)(a).

Defendant argues that the trial court erred or abused its discretion by permitting the prosecution to amend the information to allege acts that occurred on dates other than January 30, 2001. She asserts that she was prejudiced by the amendment because she was unable to prepare to defend against the added allegations. We disagree. A defendant who is charged with stalking is alleged to have engaged in a course of conduct involving two or more separate acts. The charge itself put defendant on notice that multiple incidents of alleged conduct would be raised at trial. Moreover, at the preliminary examination, complainant testified regarding the incident in March 2000, which resulted in her securing the PPO against defendant.<sup>2</sup>

At trial, defendant was able to present a defense through her own testimony. She testified regarding the various incidents. The trial court, sitting as the trier of fact, found the complainant more credible in general, including with respect to the January 30 incident. While the court also

---

<sup>2</sup> The stabbing incident was also mentioned at the preliminary exam, but in connection with the bond.

discussed defendant's credibility in connection with the stabbing incident, it did not base its finding of guilt on a conclusion that the incident occurred as described by the complainant. Rather, the court found the competing accounts of the incident supported its conclusion that the complainant's versions of the various events were credible and made sense, and defendant's did not. The court was entitled to determine which testimony it would accept as credible. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The fact that the trial court did not believe defendant's testimony does not mandate a conclusion that defendant was unable to defend herself against the added allegations. We conclude that the charge established fair notice that a course of conduct would be considered, and the testimony regarding the stabbing did not prevent defendant from presenting a defense.

Defendant also asserts that trial counsel was ineffective for failure to prepare defendant to give testimony regarding the earlier incidents once the court ruled that such testimony would be allowed. To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.*, 600. Counsel is presumed to have afforded effective assistance, and the defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

We find no ineffective assistance of counsel. Defendant gave detailed testimony regarding the contacts that she acknowledged having with complainant; however, the trial court did not deem her testimony credible. Defendant does not specify how her testimony would have differed had counsel prepared her in advance to testify regarding the incidents added via the amended information. Defendant has not established prejudice in that she has not shown that had counsel prepared her in advance, it is reasonably probable that the result of the proceedings would have been different. *Carbin, supra*.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Helene N. White  
/s/ Joel P. Hoekstra