

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION IV

STATE OF MISSOURI,)	No. ED95133
)	
Respondent,)	Appeal from the Circuit Court
)	of Pike County
vs.)	
)	Honorable David H. Ash
KEVIN C. DURHAM,)	
)	
Appellant.)	FILED: April 17, 2012

Kevin Durham (Durham) appeals from the trial court’s judgment after he was convicted by a jury of two counts of harassment under Section 565.090, RSMo. 2008. On direct appeal, Durham asserts multiple claims of error. Durham raises several points on appeal, suggesting first that the State’s original information was fatally flawed, and that the trial court erred in allowing the State to amend its information on the day of trial. Durham also contends that the trial court erred in not admitting certain witness testimony, and failing to declare a mistrial following the State’s argument during the sentencing phase and after the jury requested the trial court consider entering a sentence of community service in lieu of jail time. Finally, Durham argues that the Missouri Approved Instruction for harassment is unconstitutionally vague.

AFFIRMED

Division 4 holds: 1) The State’s original and amended information were filed in compliance with the Missouri Rules of Criminal Procedure, and we find no error in the trial court’s ruling to proceed with Durham’s prosecution under the original or amended information. 2) We further find no abuse of discretion in the trial court’s evidentiary ruling prohibiting the admission of witness testimony. 3) We find no plain error in the trial court’s failure to declare a mistrial. 4) Finally, we find that Durham waived his challenge to the constitutionality of the jury instructions when he failed to raise that issue before the trial court. Accordingly, we affirm the trial court’s judgment.

Opinion by: Kurt S. Odenwald, C.J., Patricia L. Cohen, J., and Robert M. Clayton III, J., Concur.

Attorney for Appellant: Michael P. O’Neill

Attorney for Respondent: Therese Marchlewski

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